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*** Notices to Subscribers and Contributors will be found on page ii.

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Current Topics.

An Elective Judiciary.

A PARAGRAPH in the latest number of the *American Bar Association Journal* stating that The Hon. C. C. BUTLER, former President of the Denver Bar Association, has been elected to the Supreme Bench of the State by a large majority, is a vivid reminder that in the United States promotion to the judiciary is still in many of the States purely elective. Although the system appears in some instances to work better than might be expected, it is the reverse of ideal, and so competent an observer as Lord BRYCE declared that the result was that many of the State judges were men of modest abilities and scanty learning, oftentimes inferior to the advocates practising before them. But save in a few of the more intellectual New England States, such as Massachusetts, Connecticut, New Hampshire and Maine, the view is strongly held that, like other public officials, the State judiciary should be elected direct by the democracy. In such a matter it is, of course, for the people of the United States to decide for themselves how their judges shall be appointed, but, nevertheless, we cannot but wonder that they do not realise the necessity of keeping judicial appointments entirely out of the sphere of popular election with its inevitable tendency to lower the dignity of the bench. In appointing the Federal judiciary, the Americans adopt the better plan, the selection of these judges being in the hands of the President with the advice and consent of the Senate.

Debt Collecting Agencies and Solicitors.

IN A REPORT from the Shoreditch County Court, headed "A Surprise for Debt Collecting Agencies," it is recorded in *The Ironmonger* of the 19th inst. that such an agency unsuccessfully sued a subscriber for a disbursement to solicitors employed in collecting his debts. Since, under s. 72 of the County Courts Act, 1888, solicitors and barristers only have the unqualified right to address the court on behalf of a litigant, such a disbursement would be proper and reasonable if proceedings were necessary. Hence no doubt *The Ironmonger* headline. On perusing the report, however, it appears that the agreement between the agency and its subscriber was for some reason not in evidence. The judge's decision therefore appears to have been that, unless express authority was obtained, the agency, though possibly it might have instructed the solicitors on behalf of its subscriber, had no implied authority to pay their bill and sue the subscriber for the amount paid. Thus the decision was, not that the agency could not have been authorised to pay the bill, but that in fact it had not been so authorised. Since it seems to have been common ground that the subscriber would be liable for the bill sooner or later, it is somewhat difficult to understand from the report why the claim was resisted. Possibly the stronger case required for taxation after a bill has actually been paid may have been a factor. The agency, held by the judge to be a mere volunteer *qua* the payment, could not have obtained an order for taxation at all: see *re Becke and Flower*, 1844, 5 Beav. 406. Premature payment by a volunteer, however, could hardly prejudice the clients' rights under s. 38 of the Act of 1843. The only warning that debt collecting agencies need take from the case is to obtain express authority from their subscribers to pay the solicitors' bill incurred in any proceedings or otherwise, and to have that authority in evidence in court in case there is any dispute about it.

Wilfully Neglecting Police Signals.

SECTION 9 OF the London Traffic Act, 1924, provides that a driver wilfully neglecting or refusing to stop his vehicle or make it proceed as directed by a uniformed constable engaged in traffic regulation shall be liable to a fine of five pounds. Difficulty arises upon the words "wilfully neglects." In several recent cases before the metropolitan courts it has been quite obvious that the neglect has been due to failure to see the policeman's signal, and this, by the nature of things, will be the most common form of neglect to obey traffic orders. But failure to observe a signal negatives *wilful* neglect to obey it, and a high proportion of summonses under the section are doomed to break down. On the other hand, in many of such cases the driver ought to have seen the signal; his failure to do so is due to not keeping his eyes about him; and this conduct is either reckless or negligent driving within s. 1 of the Motor Car Act, 1903, for which, it may be remarked, the penalty is much greater than wilful disobedience of a constable's signal. On the other hand, police officers do not always realise that the view of a particular driver is obstructed until it is too late to act on the signal; and sometimes the actual giving of a necessary signal is unduly delayed.

The Custody of Children.

"WHEREAS Parliament . . . has sought to establish equality in law between the sexes, and it is expedient that this principle should obtain with respect to the guardianship of infants and the rights and responsibilities conferred thereby . . ."

This is the preamble and therefore the avowed purpose of the Guardianship of Infants Act, 1925; and it would seem that this purpose has been *more* than carried out.

In a recent case at Marylebone Police Court a mother was fined for "permitting premises to be used improperly"; her husband, from whom she was separated, then applied to the

magistrate for a summons to obtain the custody of his child, now in his wife's care. The magistrate is reported to have refused the husband's application, on the ground that the Act gives jurisdiction to a court of summary jurisdiction to grant such a summons to a mother, but *not* to a father; a father must make his application to the High Court.

This decision hardly conforms with the spirit of ss. 1 and 2: "where in any proceeding before any court (whether or not a court within the meaning of the Guardianship of Infants Act, 1886) the custody . . . of an infant . . . is in question . . . the court . . . shall regard the welfare of the infant as the first and paramount consideration, and shall not take into consideration whether the claim of the father . . . is superior to that of the mother, *or the claim of the mother is superior to that of the father* . . . The mother of an infant shall have the like powers to apply to the court (in respect of *any* matter affecting the infant) as are possessed by the father." The decision, however, seems to be based upon the words of s. 7: "*For the purposes of the Guardianship of Infants Act*, 1886 . . . the expression 'the court' shall include a court of summary jurisdiction.'" The restricting words "for the purposes of the Guardianship of Infants Act, 1886," seem to make applicable the provisions of the Act of 1886. Section 5 of that Act deals with the question of custody and is as follows: "The court may, *upon the application of the mother* of any infant, . . . make such order as it may think fit regarding the custody of such infant . . . and may alter, vary, or discharge such order *on the application of either parent* . . ." But if this be the basis of the decision, we are left doubting whether the provisos to s. 7 of the Act of 1925—and how clumsy and awkward is their drafting—do not cut down the jurisdiction of courts of summary jurisdiction to a much greater degree than is contemplated in the decision of the magistrate. For by proviso (*a*) "a court of summary jurisdiction—though 'a court' for the purposes of the Act of 1886—shall *not* be competent to entertain *any* application other than an application for variation or discharge of an existing order under the Guardianship of Infants Act, 1886, . . ."—i.e., an application which, by the Act of 1886, may be made by either parent. The argument is not without foundation that a court of summary jurisdiction is not "a court" for many of the purposes of the Act of 1886, and that one of these purposes is an application *by a mother* for the custody of her child (s. 5 of the Act of 1886). But even if this argument be unsound, the decision itself must show how unfortunate in its operation is "legislation by reference" where the reference is to an earlier statute which does not propose to agree with the preamble of the later Act. If it was not the intention of the Legislature to send a father to the High Court to secure the custody of his child, then the case for the amendment of the Guardianship of Infants Act, 1925, has been made out. Surely it was never intended to make the rights of the mother greater than those of the father; the preamble and purpose of the Act do not require such a result.

Remittal of Moneylenders' Actions to County Court.

In our issue of the 5th inst. (*ante*, p. 182), we had occasion to deal with the question of the trial of moneylenders' actions in the short cause list, and we should like to draw attention to another important case, dealing also with practice in relation to moneylenders' actions.

The case in question is *White* v. *Smith*, 43 T.L.R. 288, and deals with the right to have an action, in which relief is claimed by the borrower, under the Moneylenders Acts, remitted to the county court.

The relief which was claimed by the plaintiff, the borrower in *White* v. *Smith*, was for the re-opening of the transaction, and he claimed, *inter alia*, a declaration that the interest charged was excessive, and that the transaction was harsh and unconscionable, and for the payment of any amount that might be found due on the taking of the accounts and inquiries.

The plaintiff commenced his action by writ in the High Court, and he subsequently applied for the remittal of the action to the county court, limiting his claim to £100. The point in issue, was whether there was any jurisdiction to remit to the county court, it being argued that the action was not one that was "founded on contract," within the meaning of s. 65 of the County Courts Act, 1888, as amended by s. 1 of the County Courts Act, 1919. The material part of that section is as follows:—

> "In any action commenced in the High Court, where—(1) the plaintiff's claim is founded either on contract or on tort, and the amount claimed or remaining in dispute in respect thereof does not exceed one hundred pounds, whether the action could or could not have been commenced in a county court, . . . either party may at any time apply to the court or a judge for an order that the claim . . . shall be transferred" to the county court.

In order to determine whether or not an action is founded on contract, the tests to be applied are those indicated in *Turner* v. *Stallibrass*, 1898, 1 R.B. 56, and it might be observed that the form of the action as stated in the pleadings is quite immaterial. The words "founded on contract or on tort" are in no sense words of art, and they are to be understood in an ordinary and not in a technical sense. In *Turner* v. *Stallibrass*, A. L. Smith, said (*ib.*, at p. 58):—"If in order to make out a cause of action it is not necessary for the plaintiff to rely on a contract, the action is one founded on tort; but on the other hand, if, in order successfully to maintain his action, it is necessary for him to rely upon and prove a contract, the action is one founded upon contract." Applying this simple test to the facts in *White* v. *Smith*, it is clear that in order to succeed in that case, the plaintiff had to establish, in the first instance, a moneylending contract, since he could not claim for relief, and for the refund of any sums paid by him to the moneylenders, without establishing, in the first place, the existence of a contract between himself and the moneylender. The court accordingly held, in that case, that the action was founded on contract and that it could accordingly be remitted.

Fairs and Mercantile Law.

The striking success of recent great fairs, both in England and on the Continent—gatherings welcome as presaging the much-needed trade revival—is a vivid reminder of the role played by the great medieval fairs in the development of the law merchant. As every student is aware, much of the commerce of the middle ages was carried on by means of fairs, such as Besançon and Lyons in France, Antwerp in the Low Countries, and Winchester and Stourbridge in England, and the obligations there contracted were frequently arranged to be discharged at future fairs. As these gatherings were attended by merchants from all over Europe, the dealings were governed by the simplest rules and disputes disposed of by speedy methods. Hence arose the market law, administered in the market courts, which had an international character as was fitting in view of the different nationalities often represented. It has been said, with what degree of accuracy we do not pretend to determine, that in the use of bills of exchange or promissory notes the influence of the fairs has left its mark. At these great markets bills would be given in settlement of balances due, and it is said that the periods for which bills are commonly drawn were determined by the intervals between the great fairs. Summary execution on bills, more marked in Scotland and in some Continental countries than with us, is also traceable to the practice and necessities of merchants who frequented the medieval fairs. Probably, too, it is from these institutions that we derive the special rules as to the effect of sales in market overt. In such wise we link our past and present business machinery and legal rules with these old gatherings of merchants, who little dreamt of the influence they were all unconsciously creating.

Death Duties.

By H. ARNOLD WOOLLEY
(*Author of "A Handbook on the Death Duties"*)*

III.—(*Continued from p.* 220).

GIFTS *inter vivos*.

The share which the State now demands of every benefaction made to take effect at death is so very large that property owners are more and more adopting the view that it is advisable to make some of their dispositions *inter vivos*. The question of the extent to which this course is effective is therefore assuming added importance. Steps have been taken by the Finance Act, 1894, s. 2, Finance Act, 1900, s. 11, and Finance (1909-10) Act, 1910, s. 59, to put a curb on the avoidance of duty in this way. In the case of gifts made after the date of the Act of 1910, the law is as follows: Gifts made within three years of the death (one year in the case of a charity) are liable to Estate Duty (but not to Legacy or Succession Duty), *unless* (1) made in consideration of marriage, or (2) are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income or to the circumstances, or (3) in the case of any donee, do not exceed £100 in value or amount. These are alternatives. The gift is liable in any case if *bona fide* possession was not immediately taken and thenceforth retained to the entire exclusion of the deceased. No sham sale will avail (see *Att.-Gen.* v. *Johnson*, 1903, 1 K.B. 617; 72 L.J., K.B. 323). In the case of *Att.-Gen.* v. *Seccombe*, (1911), 2 K.B. 688; 80 L.J., K.B. 913, a farmer who was an old man gave his farm and almost all his property *inter vivos* to his great-nephew, who resided with him. The donee allowed the donor to continue to live with him, and maintained him, but there was no enforceable contract to do so. Held, that the gift was an out-and-out one, and no duty was payable on the donor's death. In *Att.-Gen.* v. *Beech*, 1899, A.C. 53; 68 L.J., Q.B. 130, a tenant-for-life of a settled fund, who had a power of appointment, appointed the fund to her son, and then by a later deed she surrendered her life interest to him. Held, that no property passed on her death, and no duty was payable. But the appointment and release must be clear and irrevocable and the securities had better be transferred to the appointee at once, and the transaction must be completed three years before the death, to prevent a claim for duty on the value of the gift of the life interest.

With regard to exception (2) above, the following is a case which the Revenue have favourably considered on a recent occasion. A had an annual gross income of some £15,000, and for some years before his death had made regular presents of £1,000 a year to each of four children. These were held to be exempt. The main questions to be considered are (1) the proportion of the amount given to the size of the deceased's income, (2) how long they had continued, (3) the use to which they were put, and of course many other circumstances have to be taken into account. In the case just quoted it was found that Revenue adopted a very reasonable and broad attitude, but, it may be added, they could well afford to do so.

A *donatio mortis causa* (gift conditional on the donor dying) is liable to Estate Duty and also to Legacy Duty (Revenue Act, 1845).

The duty on gifts *inter vivos* and on *donationes mortis causa* is payable by the donee (not out of the donor's estate), because the property does not pass to the executor "as such."

This brings us to the consideration of the meaning and significance of the words "as such."

EXECUTOR "AS SUCH."

Finance Act, 1894, s. 9 (1), makes the estate duty on all property not passing to the executor as such a first charge on such property, and consequently the beneficiaries who take such property must pay the Estate Duty thereon, and they are not entitled to have it paid out of the deceased's residuary estate, unles he directs to the contrary. The words "as such," must be construed with reference to the law in 1894, at which date realty did not pass to the executor (although it does now), and consequently the duty on realty is a charge upon it, and the devisee must pay the duty. Reference should be made to *In re Scull, Scott* v. *Morris*, 1917, 118 L.T., 7 C.A., a Court of Appeal case reversing a decision of Eve, J., for a further explanation of the position. The following do not pass to the executor as such:—

(1) Personalty settled otherwise than by deceased's will, even where deceased had and exercised a general power of appointment, see *Re O'Grady, O'Grady* v. *Wilmot*, 1916, 2 A.C. 231; 85 L.J. Ch. 386.

(2) Gifts *inter vivos* and *donationes mortis causa* (*Re Hudson, Spencer* v. *Turner*, 1911, 1 Ch. 206).

(3) Property in which deceased had no interest, e.g., a nomination life policy.

(4) Freehold property (see above).

(5) Property abroad at the date of death (*Re Scull, supra*), but possibly otherwise if the property is remitted here before probate; and note that ships are taken to be where their ports of registration are, and cargo to be where the bill of lading is.. Note also that if the property is in a *British Possession*, although the property does not pass to the executor as such, the duty is not a charge on it (Finance Act, 1894, s. 20 (2)), and therefore if the property is situated in a British Possession the donee is better off than if it were in a foreign country. In the former case he does not bear the British Estate Duty; in the latter case he does.

The executor must pay the duty on movables abroad in the first instance, and must pay it before obtaining probate (Finance Act, 1894, ss. 6 (2) and 8 (3)).

DEATH WITHIN A YEAR OF TESTATOR.

One further point of importance may be noticed. If a legacy or share of residue is given by a testator to B for life, and B dies before the end of the "executor's year," and before the legacy was paid or appropriated, so that he never became entitled to any income from it, no Estate Duty is payable on the legatee's death (*Re Harrison, Johnstone* v. *Blackburn, &c., Infirmary*, 1918, 2 Ch. 374; 88 L.J. Ch. 133).

(*To be continued.*)

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Income Tax and Residence.

IT is not often that one comes across two cases decided at the same time and raising the same point upon somewhat similar facts, where the court has decided that a dividing line must be drawn between them, and that one case falls on one side, and the other on the further side of that line. That, however, is what happened in the recent decisions of the Court of Appeal in *Levene* v. *Inland Revenue Commissioners* and *Lysaght* v. *Same* (71 SOL. J., p. 253), which have added two more to the numerous cases on what constitutes "residence" in the United Kingdom. In both cases the appellants claimed exemption from income tax on securities under Sched. C of the Income Tax Act, 1918, on the ground that they were not "resident" in England, and under s. 46 as being British subjects not "ordinarily resident" in the United Kingdom. In both cases the Commissioners had found that the appellants were so resident, and Mr. Justice ROWLATT had affirmed their decision. Mr. LEVENE was a gentleman who had formerly lived in England, but having retired from business preferred, for reasons connected with health and the English winter climate, to live most of the year abroad. He did not take any house for permanent residence, but moved about the Riviera and other parts of France from hotel to hotel. During the

summer, however, he with his wife used regularly to visit England, staying in hotels or sometimes with friends. These visits were undertaken for several reasons, but mainly for social pleasure, to obtain medical advice, to attend certain Jewish religious observances, and lastly—but probably not least—for business arising out of his income tax claims. On these facts the Court of Appeal, without hesitation, dismissed the appeal, holding that the facts were sufficient to constitute residence. The case was very much like that of the Scottish case of *Reid* v. *Commissioners of Inland Revenue*, 10 Tax Cas. 673. *Lysaght's* was a more difficult case, and the question whether the court was entitled to reverse the decision of the Commissioners gave rise to a marked difference of opinion, LAWRENCE, L.J., dissenting from the majority which allowed the appeal. Mr. LYSAGHT, who had been managing director of an engineering company, partially retired in 1919 and went to live in Southern Ireland, where he had family ties and a considerable estate. He remained a director of the company, however, being paid £1,500 a year for his services as consultant. A directors' meeting was held monthly, and to attend this the appellant used to come to England for some three or four days a month, staying at a hotel in Bath, and occasionally visiting works in Lincolnshire belonging to the company. The visits paid to England were purely on business; the appellant always left his wife and family at home in Ireland, and, though a member of a London club, he scarcely ever called there. The Master of the Rolls said that, as compared with *Levene's Case*, these facts brought the case on to the other side of the line, and SARGANT, L.J., agreed.

Using the word "residence" in its popular sense as meaning a permanent address at a house owned or occupied by the taxpayer, it would seem that LEVENE possessed no residence at all, but in law he was clearly "resident" and "ordinarily resident" both in France and in England. LYSAGHT, however, had a permanent residence in the Irish Free State, and his visits to England were like those of a merchant who goes to Leipzig Fair or similar places for business reasons. But it is evident that a very little more, such, for instance, as the permanent booking of a room at the hotel at Bath for the dates of the directors' meetings, might have turned the scale against the appellant.

LAWRENCE, L.J., thought that the Commissioners' finding of fact on the question of residence was final, and that the court could not review it and say that the inference which they had drawn from the facts was wrong in law, and found it very difficult to reconcile the various *dicta* upon this point. But after all, such questions as these are mixed questions of fact and law. Lord ATKINSON in *Great Western Railway* v. *Bater*, 1922, 2 A.C. 1, at p. 12, observed: "What I have many times in this House protested against is the attempt to secure for a finding on a mixed question of law and fact the unassailability which belongs only to a finding on questions of pure fact. This is sought to be effected by styling the finding on a mixed question of law and fact a finding of fact. What is the proper construction of a statute, or of any other printed or written document, is a question of law."

And it should be added that by s. 27 of the Finance Act, 1924, a special right of appeal against the decision of the Commissioners of Inland Revenue is given in questions as to residence, ordinary residence and domicile arising under particular sections of the Income Tax Act, 1918, including those involved in the above cases. It cannot reasonably have been intended that the decision of the Special Commissioners in such difficult cases as these should be final.

The attention of the Legal Profession is called to the fact that the PHŒNIX ASSURANCE COMPANY Ltd., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS) invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

The Moneylenders Bill.

I.

BY THE HON. DOUGALL MESTON, of Lincoln's Inn

(*Joint Author of "The Law Relating to Moneylenders."*)*

THE new Moneylenders Bill introduced by Mr. BURMAN in the House of Commons on the 4th inst. marks the third attempt which has been made in the course of the last two years to amend the law with respect to persons carrying on business as moneylenders. The new measure proposes to make a considerable number of alterations in, and additions to, the existing law relating to moneylenders which call for careful investigation.

The first important alteration in the law is in connexion with registration. Under the Moneylenders Act, 1900, s. 2 (1), it is enacted that "A moneylender as defined by this Act (*a*) shall register himself as a moneylender in accordance with regulations under this Act, at an office provided for the purpose by the Commissioners of Inland Revenue, under his own or usual trade name, and in no other name, and with the address, or all the addresses, if more than one, at which he carries on his business of moneylender." By s. 3 it is provided that "(1) The Commissioners of Inland Revenue, subject to the approval of the Treasury, may make regulations respecting the registration of moneylenders, whether individuals, firms, societies, or companies, the form of the register, and the particulars to be entered therein, and the fees to be paid on registration and renewal of registration, not exceeding one pound for each registration or renewal, and respecting the inspection of the register and the fees payable therefor." By the regulations made under the above section, dated November, 1911, the fee for registering is £1 in respect both of a registration and of a renewal of registration. Should the business be carried on in more than one part of the United Kingdom a separate registration must be made for each part. As to the duration of the registration, it is provided by sub-s. (2) of s. 3 that "the registration shall cease to have effect at the expiration of three years from the date of the registration, but may be renewed from time to time, and if renewed shall have effect for three years from the date of the renewal."

The system of registration is sought to be replaced by that of "licensing." The Moneylenders Bill, 1927, s. 1 (1), provides that "Every moneylender, whether carrying on business alone or as a partner in a firm, shall take out annually in respect of every address at which he carries on his business as such, an excise licence (in this Act referred to as a 'moneylender's excise licence'), which shall expire on the thirty-first day of July in every year, and, subject as hereinafter provided, there shall be charged on every moneylender's excise licence an excise duty of fifteen pounds or, if the licence be taken out not more than six months before the expiration thereof, of ten pounds" Then follow certain minor provisions relating to the payment of the above-mentioned excise duty, which need not be considered here. Further, by sub-s. (2) it is provided that "A moneylender's excise licence shall be taken out by a moneylender in his true name, and every such licence shall show the name under which and the address at which the moneylender is authorised by the licence to carry on business as such."

It will be observed at a glance that the above provisions relating to licensing are intended to impose a heavier burden on the moneylender than the existing provisions relating to registration. Under the existing regulations the fee for registration is £1, and where the business is carried on in more than one part of the United Kingdom a separate registration must be made for each part. This does not mean that a business which is carried on at various addresses in England requires separate registration in respect of such addresses; it merely refers to a number of addresses at which the *same* business may be carried on *in different parts* of the United Kingdom. The registration,

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moreover, lasts for three years, after which it must be renewed if the moneylender desires to carry on his moneylending business. Under the new Bill, however, it is to be necessary for *every* moneylender, whether carrying on business alone or as a partner in a firm, to take out *annually* in respect of *every address* at which he carries on his business of moneylending an excise licence on which there shall be charged an excise duty of £15, except where the licence is taken out not more than six months before the expiration thereof, when an excise duty of £10 shall be charged. Thus, if a moneylender is going to carry on business at Jermyn Street and also at Birmingham, it would be necessary for him in future to take out an excise licence annually in respect of his address in Jermyn Street *and* also in respect of his address in Birmingham, and upon *both* of such licences there would be payable the specified excise duty. Again, under s. 2 (1) (*a*) of the Moneylenders Act, 1900, a moneylender must register in his *own or usual trade name*. But the new Bill provides that a moneylender's excise licence is to be taken out in his *true* name. The word "true" name will give rise to some nice points. In the ordinary and popular sense a person's true name is his baptismal name, but it must be remembered that a person may acquire a name by repute which passes as his true name for legal purposes. It is submitted that the word "true" name in the new Bill will have the same meaning as "own" name under s. 2 (1) (*a*) of the Moneylenders Act, 1900. At all events under the new Bill a moneylender is not to be able to take out a licence in his "usual trade name." The object of the new provisions in the above respects is to provide for a better identification of the moneylender.

As to the name in, and address at, which the moneylending business may be carried on, it is at present provided by the Moneylenders Act, 1900, s. 2 (1), that "A moneylender as defined by this Act (*b*) shall carry on the moneylending business in his registered name, and in no other name, and under no other description, and at his registered address or addresses, and at no other address." And, by the Moneylenders Act, 1911, s. 2 (1), it is enacted that "No person shall be registered as a moneylender under any name including the word 'bank,' or under any name implying that he carries on banking business; and, where any moneylender is registered under any such name, the name shall be removed from the register and a notification to that effect sent to the moneylender."

It is provided by the Moneylenders Bill, 1927, s. 1 (3), that "A Moneylender's excise licence shall not authorise a moneylender to carry on business at more than one address or under more than one name, or under any name which includes the word 'bank' or otherwise implies that he carries on banking business, and no such licence shall authorise a moneylender to carry on business under any name, not being his true name, except (*a*) the name of a firm in which he is a partner, not being a firm required by the Registration of Business Names Act, 1916, to be registered; or (*b*) a business name, whether of an individual or of a firm in which he is a partner, under which he or the firm has, at the passing of this Act, been registered for not less than three years both as a moneylender under the Moneylenders Act, 1900, and under the Registration of Business Names Act, 1916." Disregarding the exceptions (*a*) and (*b*) contained in s. 1 (3) of the Moneylenders Bill, 1927, it will be noted that the new provisions have substantially the same object and meaning as those contained in s. 2 (1) (*b*) of the Moneylenders Act, 1900, coupled with s. 2 (1) of the Moneylenders Act, 1911. Under the existing law it has been held that a moneylender may "carry *on*" his business at his registered address even though a particular item of a transaction is "carried *out*" elsewhere. In commenting upon the difference between "carrying *on*" and "carrying *out*" the business of moneylending, PICKFORD, L.J., in *Bowen (H.) & Co.* v. *Samuels*, 1918, 34 T.L.R. 487, took as an example the case of a horse dealer carrying on business in London. "Such a person," said the learned Lord Justice, "would still be 'carrying on' the business in London, although he went to Birmingham to buy a horse there." In the leading case of *Kirkwood* v. *Gadd*, 1910, A.C. 422, it was clearly laid down by the House of Lords that if a moneylender really deals with a borrower from the registered address, whether by interview or correspondence, he may, without infringing the Moneylenders Act, 1900, transact negotiations or conclude the contract elsewhere. The test in every case is whether the borrower was brought sufficiently into touch with the registered address *before* the transaction was completed, e.g., before the promissory note for the loan was signed. As to whether the borrower has been brought sufficiently into touch with the moneylender at the material time is a question of fact, the answer to which depends upon the circumstances of the case. The same broad principles are still to apply under the new Bill. While the Moneylenders Act, 1900, s. 2 (1) (*b*) enjoins a moneylender to carry on his business in his registered name and at his registered address, the Moneylenders Bill, 1927, s. 1 (3), provides in effect that a moneylender is to carry on his business in his licensed name and at his licensed address. As we have previously observed, the regulations relating to licensing are more stringent and of wider application than those relating to registration, but the same general principle concerning the "carrying on" of the moneylending business applies under both systems.

As to entering into agreements and taking securities by moneylenders, it is provided, by the Moneylenders Act, 1900, s. 2 (1), that "A moneylender as defined by this Act (*c*) shall not enter into any agreement in the course of his business as a moneylender with respect to the advance and repayment of money, or take any security for money in the course of his business as a moneylender, otherwise than in his registered name." The above provisions are reproduced in s. 1 (5) (*c*) of the Moneylenders Bill save that the word "authorised" is substituted for "registered." At this point it may be convenient to note that under s. 15 (1) of the Bill the terms "authorised name" and "authorised address" in the Bill mean respectively the name under which and the address at which the moneylender is authorised by a licence taken out under the Bill to carry on business as a moneylender.

In regard to the penalties imposed for carrying on moneylending business in contravention of the statute, it is provided by the Moneylenders Act, 1900, s. 2 (2), that "If a moneylender fails to register himself as required by this Act, or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or fails to comply with any other requirement of this section (i.e., s. 2 of the Moneylenders Act, 1900), he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding one hundred pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding one hundred pounds, or to both: Provided that if the offender be a body corporate that body corporate shall be liable on a second or subsequent conviction to a fine not exceeding five hundred pounds." By sub-s. (3) of the same section it is provided that a prosecution under s. 2 (1) (*a*) of the Moneylenders Act, 1900 (which subsection enjoins a moneylender to register himself in accordance with the regulations under the Act), shall not be instituted except with the consent of the Attorney-General or Solicitor-General. Similar penalties to the above are imposed by s. 1 (5) of the Moneylenders Bill, 1927, which provides that if any person "(*a*) takes out a moneylender's excise licence in any name other than his true name; or (*b*) carries on business as a moneylender without having in force a proper moneylender's excise licence authorising him so to do, or, being licensed as a moneylender, carries on business as such in any name other than his authorised name, or at any other place

than his authorised address or addresses; or (*c*) enters into any agreement in the course of his business as a moneylender with respect to the advance or repayment of money, or takes any security for money in the course of his business as a moneylender, otherwise than in his authorised name; he shall be liable to an excise penalty of one hundred pounds. On a second or subsequent conviction of any person (other than a company) for an offence under this sub-section (i.e., sub-s. (5) of s. 1 of the Moneylenders Bill, 1927) the court may, in lieu of or in addition to ordering the offender to pay the penalty aforesaid, order him to be imprisoned for a term not exceeding three months, and an offender being a company shall on a second or subsequent conviction be liable to an excise penalty of five hundred pounds." It will be observed that under the new Bill no mention is made of obtaining the leave of the Attorney-General or Solicitor-General before any prosecution under the Act is launched.

In future a moneylender's excise licence is not to be granted except to a person who holds a certificate granted in accordance with the provisions of s. 2 of the Bill, and any moneylender's excise licence granted in contravention of s. 2 aforesaid shall be void. Such certificate is to be granted by the petty sessional court having jurisdiction in the petty sessional division in which the moneylender's business is to be carried on. By sub-s. (5) of the same section it is provided that " A certificate shall not be refused except on some one or more of the following grounds: (*a*) that satisfactory evidence has not been produced of the good character of the applicant, and in the case of a company of the persons responsible for the management thereof; (*b*) that satisfactory evidence has been produced that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is not a fit and proper person to hold a certificate; (*c*) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is by order of a court disqualified for holding a certificate; (*d*) that the applicant has not complied with the provisions of any of the rules made under this section with respect to applications for certificates." In regard to Scotland it is provided by s. 17 (*c*) that certificates under s. 2 of the Bill are to be granted by the Licensing Court within whose jurisdiction the premises in which the moneylender's business is to be carried on are situated. Other provisions contained in s. 2 of the Bill confer power upon petty sessional courts in regard to the suspension, forfeiture and production of certificates.

(To be continued.)

Some Problems of Expulsion.

(Continued from p. 219.)

Probably redress for expulsion from an unendowed religious body could not be obtained in our courts, just as expulsion from proprietary clubs is not usually actionable, as decided in *Baird* v. *Wells*, 1890, 44 C.D. 661, and *Young* v. *Ladies' Imperial Club, Limited*, 1920, 1 K.B. 81. The law as to expulsion from clubs in general, however, will be found very fully considered in these pages last year, Vol. 70, pp. 828-9. The particular case where a club which is not a proprietary club has an arbitrary expulsion rule on the lines of that of the Ladies' Imperial Club above does not seem to have come before a court. It is submitted, however, that a member who deliberately subjected himself to the risk of arbitrary expulsion could have no complaint if he happened to be the victim of it.

One of the most striking cases in which the question of arbitrary expulsion was raised was that of Cadet Archer-Shee, whom the Admiralty claimed to have the right to expel from Osborne College on a charge of theft and forgery. The then Solicitor-General, appearing for the Admiralty, took a very high line. Not only did he claim that the youth could be dismissed at pleasure, on the lines of *Dunn* v. *R.*, *supra*, but that the Crown had no power to override its own power of instant dismissal. His demurrer on such lines succeeded before Mr. Justice Ridley, but the magnificent advocacy of Lord Carson (whose own personal opinion of the way the boy had been treated he made no pains to conceal), procured a trial of the facts upon appeal, with the result that the Crown withdrew the accusation. Since the points of law were not therefore fully argued, it is not a reported case, but it will be found in *The Times* of July, 1910. The point of interest here was the common ground that the Admiralty had in fact an arbitrary power of expulsion, but they had purported to expel under another power on an accusation upon which the court ruled, in accordance with the decided cases, that the boy ought to have a fair hearing.

The law generally as to expulsion from schools will be found in *Fitzgerald* v. *Northcote*, 1865, 4 F. & F. 656; *Hutt* v. *The Governors of Haileybury College*, 1888, 4 T.L.R. 623; and *Wood* v. *Prestwich*, 1911, 104 L.T. 389. Its general effect is that there is no inherent arbitrary power of expulsion, but a rule which provides for expulsion on misconduct, and which provides also that the boy charged shall have a fair hearing is *intra vires*. It has also been held that a schoolmaster's honest belief of a boy's guilt after such hearing will justify expulsion, although he may be mistaken. This is practically in accordance with the law as to clubs, though it may be open to question whether a schoolboy is as well able to defend himself as a member of a club, or whether a headmaster, who may be a brilliant scholar and disciplinarian, necessarily has the judicial mind. If these questions are answered in the negative, a boy should have an appeal to some outside tribunal. In the case of private or proprietary schools, the issue on expulsion would no doubt be the terms of the contract between the proprietor and the parent, starting from the assumption that if the latter had contracted to keep and teach a boy for a term, he would have to carry out the obligation unless he had reserved the right to terminate the contract on particular misconduct. Boys at private schools, however, have two very powerful safeguards from unjust expulsion, as pointed out by Mr. Anstey in " Vice Versa." One is that the schoolmaster's plea on punishment " It hurts me as much as it hurts you," though his victim may have some doubts of its sincerity when the punishment takes a corporal form, has here much truth, for expulsion is a confession of failure and smirches the credit of a school. And there is also the direct loss of emolument to the proprietor-schoolmaster.

(To be continued.)

The Proposal for a New Great Seal.

In moving the second reading of the Royal and Parliamentary Titles Bill, the Home Secretary stated that, as soon as the Bill had passed into law, arrangements would be made for a new Great Seal, which, it is proposed, shall be called the " Great Seal of the Realm." The withdrawal from use of the existing Great Seal, and the substitution of a new one in its place, is an event of national interest. In Wharton's " Law Dictionary," the Great Seal is stated to be: " The emblem of sovereignty introduced by Edward the Confessor," and it proceeds: " It is held by the Lord Chancellor or Lord Keeper for the time being, and is not to be taken out of the country."

It appears that the seal introduced by Edward the Confessor, which was affixed to grants from the Crown, was not then called the Great Seal, but the Broad Seal; and that the most ancient seal with arms was that used under Richard I. In the early part of the Great Rebellion, the Lord Keeper, Littleton, took the Great Seal away with him and carried it to the King; which seems to have caused great inconvenience to the Parliamentary party. It " put a stop,"

says HALLAM, "to the regular course of the Executive Government and to the administration of justice within the Parliament's quarters. No employments could be filled up, no writs for election of members issued, no commissions for holding the assizes completed, without the indispensable formality of affixing the Great Seal." HALLAM observes, with a certain irony: "It must surely excite a smile that men who had raised armies, and fought battles against the King, should be perplexed how to get over so technical a difficulty. But the Great Seal, in the eyes of the English lawyers, has a sort of mysterious efficacy, and passes for the depository of Royal authority in a higher degree than the person of the King." This last sentence, at the present day, would require to be qualified; but to overcome the difficulty in 1643 the Commons prepared an Ordinance for making a new Great Seal, they had to wait several months before the Lords concurred in this step.

In 1688, when JAMES II hurriedly left the Kingdom, he caused the Great Seal to be dropped into the Thames, and shortly afterwards a new one was made. By the Act of Union with Scotland in 1707 it was provided that there should be one Great Seal for the two countries. In 1784 the Great Seal was stolen from the house of Lord Chancellor THURLOW, in Great Ormond Street. It was not recovered, but it was replaced by another on the following day. A new seal was brought into use on the Parliamentary union with Ireland in 1801.

The change in the relations between this country and Ireland recently effected—under which Ireland (other than Northern Ireland) has acquired the status of a dominion, with an entirely separate Parliament—makes it necessary to alter both the Royal and the Parliamentary titles. The new Bill contains two short clauses, the first of which provides that it shall be lawful for His Majesty by His Royal Proclamation under the "Great Seal of the Realm, issued within six months after the passing of this Act, to make such alteration in the style and titles appertaining to the Crown as to His Majesty may seem fit." The Royal title, at present, is as follows: "GEORGE V, by the Grace of God of *the United Kingdom of* Great Britain, *and* Ireland, and *of* the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India."

It is proposed that, with His Majesty's approval, the words printed above in italics shall in future be omitted.

The Parliament at Westminster is at present known as the Parliament of the United Kingdom of Great Britain and Ireland. It is proposed by cl. 2 of the new Bill that Parliament shall hereafter be known as and styled the "Parliament of the United Kingdom of Great Britain and Northern Ireland," and that the present Parliament shall be known as the Thirty-fourth Parliament of Great Britain and Northern Ireland, instead of the Thirty-fourth Parliament of Great Britain and Ireland.

A Conveyancer's Diary.

Power of Special Personal Representatives to Dispose of "Settled Land"—(*continued*).

Another provision of the S.L.A., 1925, which impliedly assumes the powers of a personal representative to dispose of settled land, is that contained in s. 110 (3) which sets out the assumptions upon which a purchaser of a legal estate in settled land from a personal representative is entitled to act. These assumptions are:—

(i) If the capital money (if any), payable in respect of the transaction, is paid to the personal representative that such representative is acting under *his statutory or other powers* and requires the money for purposes of administration.

(ii) If such capital money is, by the direction of the personal representative, paid to persons who are stated to be the trustees of a settlement, that such persons are the duly constituted trustees of the settlement for the purposes of this Act, and that the personal representative is acting under *his statutory powers during a minority*.

(iii) In any other case, that the personal representative is acting under *his statutory or other powers*.

The position is that the sections of the S.L.A., to which reference has been made, though not themselves conferring general, express powers of disposition upon special personal representatives, imply that such power or powers "for purposes of administration," are enjoyed by such representatives.

Similarly there are several sections of the Ad. of E.A., 1925, which at least refer to such powers if they do not, as it has been suggested, actually confer them.

Attention has already been drawn to the provisions of s. 24, in which it is submitted there is shown a clear contrary intention as respects the general meaning of settled land as defined in Ad. of E.A., 1925, s. 55 (1) (xxiv); S.L.A., 1925, s. 117 (1) (xxiv). For the purpose of s. 24 it must be that settled land has the same meaning as in s. 22 (1), namely, land vested in the testator which was settled previously to his death and not by his will.

The section expressly declares that "the special personal representative may dispose of the settled land without the concurrence of the general personal representatives," but it cannot be held to give the full power of disposition, as that expression is defined in s. 55 (1) (iii); for disposition is there made to include, unless the context otherwise requires, not only an assurance *inter vivos*, but also "a devise bequest and appointment of property contained in a will." There seems however, to be no context to explain the restricted sense in which the expression "disposition" is used.

Again the same section confers a *like* power on the general personal representatives, as respects the other property and assets of the deceased; but this can hardly extend the specific powers of disposition given to general personal representatives by ss. 2 and 39 of the Ad. of E.A. And if the section cannot be relied upon as giving the general representatives their powers of disposition, it may well be argued that neither can it be relied upon to give such a power to the special representatives.

It is interesting to observe that the marginal note to s. 24 reads as follows: "Power for special representatives to dispose of settled land"; but of course the marginal note is not part of the Act. In fact, it may well be that in construing the section the court would tend to emphasise the object of the section as being to enable the two different sets of representatives to act independently.

It is possible, therefore, that s. 24, while undoubtedly assuming a power of disposition in special representatives, may not be held expressly to confer any such power. In that case we have to consider the provisions of ss. 2 and 39 of the Ad. of E.A.

Section 2 provides that "all powers, duties, rights, equities, obligations and liabilities of a personal representative in force at the commencement of this Act with respect to chattels real, shall apply and attach to the personal representative, and shall have effect with respect to real estate vested in him, and in particular all such powers of disposition and dealing as were before the commencement of this Act exercisable as respect chattels real by the survivor or survivors of two or more personal representatives, as well as by a single personal representative or by all the personal representatives together, shall be exercisable by the personal representatives or representative of the deceased with respect to his real estates."

The difficulty which arises on this sub-section as respects the powers of special representatives is that the last words of the sub-section, namely "his real estate," may be held to confine the operation of the section to property which belongs

to the testator's own estate, and to exclude property (e.g., settled land) vested in him as trustee-estate-owner.

If that construction, which on a further consideration we think to be rather a narrow one, is excluded by the definition of "real estate," s. 3 (1) it may be held that a general power of disposition of settled land is conferred by s. 2 (1). In favour of this view it may be pointed out:—

(1) That the powers, etc., of *a* personal representative before 1926 as respects chattels real are expressed to be given to *the* personal representative—an expression which, as we have already noted, includes a special executor.

(2) The powers, &c., extend "to real estate vested in him," and this clearly is wide enough to include settled land.

(*To be continued.*)

Landlord and Tenant Notebook.

Licensed Victualler—*continued.*

If the covenant was to be read in a technical sense, the case of *Reg.* v. *Surrey Justices; in re Nuttall*, 4 T.L.R. 540, would seem to be an authority for maintaining that the trade of licensed victualler was carried on in *Lorden* v. *Brooke Hitching*, since in *Nuttall's Case* the court was of opinion that a person who kept a refreshment house with an on wine-licence for the sale of intoxicants for consumption on the premises was a person keeping a "victualling house" within the Act of 1828, and so entitled to a licence under that Act for the sale of beer or wine or spirits on the premises. As Mr. Justice Wills said in *Nuttall's Case*: "He sells victuals and is a victualler who has a licence, and so, is he not a licensed victualler?"

If, however, the covenant is construed in a popular sense, as meaning not to carry on a public-house on the premises, and this appears to be the construction adopted by Mr. Justice Salter, then, according to such authorities as *Pease* v. *Coates*, L.R. 2 Eq. 688, and *Duke of Devonshire* v. *Simmons*, 11 T.L.R. 52, there was no breach of covenant. In *Pease* v. *Coates* the purchaser of certain land covenanted not to carry on upon the property certain offensive trades or any business which was or might be deemed a public or private nuisance, nor to use any building erected thereon "as a public-house for the sale of beer, wine, malt liquors or spirits." It was held that the sale of beer by retail under a licence "not to be drunk on the premises" was not a breach of the covenant.

In *Duke of Devonshire* v. *Simmons* it was held that a covenant not to use premises as a public-house or beershop was not broken by using the premises as a private hotel, and by selling on the premises intoxicants under a full on-licence, subject to the conditions that no public bar should be erected on the premises, and that no one but visitors were to be supplied. The court drew attention to s. 43 (4) of the Inland Revenue Act, 1880, and to the distinction apparently drawn by the legislature itself between "hotel" and "public-house." That section provides relief in certain cases to inns and hotels in respect of the amount of duty payable for a licence to retail spirits, but withholds such relief where any *portion* of the premises is set apart and *used as an ordinary public-house* for the sale and consumption therein of liquors, "and the annual value of such portion exceeds £25."

The plaintiff landlord in *Lorden* v. *Brooke Hitching* finally relied on the argument that whatever construction was placed on the covenant in question, the matter was concluded by the statutory provisions contained in s. 31 of the Beerhouse Act, 1830, and s. 44 of the Refreshment House Act, 1860. It should be noted in particular that although licences are no longer granted under the above Acts, the sections in question have never been repealed. Section 31 of the Beerhouse Act, 1830, provides that covenants in leases whereby the trade or business of a *victualler or publican* is prohibited from being carried on on the premises, or whereby the premises are prohibited to be used as a *public-house or alehouse*, shall apply and extend to every person licensed to sell intoxicants under the provisions of the Beerhouse Act and to every house specified and mentioned in the licence granted to such persons; and s. 44 of the Refreshment House Act, 1860, contains similar provisions with regard to houses licensed under that Act. As to the reason for the insertion of these provisions in the above Acts reference may be made to the judgment of Page Wood, V.-C., in *Pease* v. *Coates*, L.R. 2 Eq., at pp. 690, 691. After pointing out that the expression "public-house" is comparatively modern, the learned Vice-Chancellor continues: "The provision contained in [s. 31 of the Beerhouse Act, 1830] that a covenant against houses being used as public-houses or alehouses should apply to persons licensed under that Act to sell beer by retail, seems to indicate that it was thought by the Legislature that even houses licensed as houses where beer might be drunk would not come under the term 'public-house.' By that Act persons were enabled to take out an excise licence for the sale of beer by retail without applying to the magistrates, and the Legislature thought it necessary, by s. 31, to provide that covenants not to use a house as a public-house or alehouse should extend to persons licensed under that Act in cases between landlord and tenant."

The view, however, that Mr. Justice Salter took of the above provisions was that they only applied to covenants existing at the time of the passing of the Acts in question, and further that there was nothing in either of the above provisions to prevent the court from arriving at the conclusion that the parties had intended otherwise, if they were material to justify such a conclusion, and he accordingly held that no breach of the covenant in question had been committed.

Obituary.

Mr. WILLIAM ADAMS.

Mr. William Adams, solicitor, senior partner in the well-known firm of Messrs. Adams & Croft, of 13 Princess-square, Plymouth, passed away at his residence Yelverton Park Villas, Yelverton, on Thursday, the 3rd inst., after an illness of only a few weeks. Mr. Adams, who celebrated his eighty-third birthday quite recently, had always led an active life and attended business up to a few weeks ago, when he contracted a chill. A member of an old and well-known legal family in Plymouth, his father was a prominent business man in the town. Mr. Adams was admitted in 1867, and was the oldest practising solicitor in that important naval port. He was associated with various public bodies, but was most prominent as clerk to the Plymouth Board of Guardians, an appointment he had held for upwards of forty years. He took a keen interest in the Plymouth Proprietary Library, and at the time of his decease was acting as Registrar. He was also prominently connected with the Athenæum. Mr. Adams leaves a widow and one son, a solicitor in practice at Bristol, having lost his other son in the Great War. He was a sound lawyer and an excellent man of business and his death is a distinct loss particularly to the legal profession. He was a member of The Law Society.

Mr. H. J. BROWN, B.A.

Mr. Henry James Brown, solicitor, a member of the firm of Messrs. Campbell, Brown & Ledbrook, of 2, Jury Street, Warwick, and of Kenilworth and Leamington, died quite suddenly at his residence, Mill House, in that town, at the age of sixty-eight. He had just recovered from a period of indisposition, and it was quite anticipated that he would be back at his professional duties within a few days. Returning, however, from an evening walk, he had a sudden seizure in his armchair, expiring almost immediately. Educated at Edgbaston Preparatory School, the deceased gentleman

graduated B.A. of London University at the age of eighteen. Mr. Brown was then articled to Messrs. Cottrell & Lowe, of Birmingham, and passing the final examination with first-class honours, was awarded the Clement's Inn, Clifford's Inn and Daniel Reardon Prizes, and also gained the Gold Medal of the Birmingham Law Society. Admitted in 1881, he acquired the practice of the late Mr. Handley of Northgate Street, and became associated with Mr. A. W. Ledbrook, both of whom a little later joined Mr. Brabazon Campbell in partnership. Apart from the large practice which he enjoyed, Mr. Brown filled with distinction the positions of Town Clerk of Warwick, Registrar of the County Court and Clerk to the Justices of the Warwick Division of the county. Possessed of a kind and sympathetic nature, he became exceedingly popular in the county, and although he always took a keen and active interest in the welfare of the town of his adoption, he declined to accept the mayoralty when it was offered to him. He resigned his membership of the town council on joining Mr. Campbell (who was then the town clerk) in partnership. His death will undoubtedly be a great loss to the Borough of Warwick. W. P. H.

Reviews.

Contracts in the Local Courts of Mediaeval England. By ROBERT L. HENRY. London: Longmans, Green & Co., Limited. 1926. 250 pp.

This instructive work on the history of an interesting and hitherto neglected branch of our law is based in the main upon a study of cases found in the "Selden Series" publications. The task which the author has set for himself, and which he has accomplished with a good measure of success, is "to work out the law of contracts as applied in the local courts from some of the records of such courts." The period covered is A.D. 602–1485, but the latter half of the period naturally receives much closer attention than does the earlier.

Procedure and proof before the local courts are the subjects dealt with in the first 180 pages. The fifth chapter throws extremely interesting light upon the uses of the tally as a method of proof in the middle ages. The last three chapters treat of covenants of warranty, pledge contract and surety promise, delivery promise and covenant for services, and bargain with God's penny or earnest.

Those who are interested in the historical development of our law, and particularly in the former work of our local courts will find Dr. Henry's researches a work well worth their careful study.

Books Received.

Civil Procedure in a Nutshell, with numerous Specimens and Examples of Writs, Pleadings, Summonses and Orders, for use in the King's Bench Division of the High Court of Justice. MARSTON GARSIA, B.A. (Oxon.), Barrister-at-Law. Demy 8vo. 1927. pp. v and 70. Sweet & Maxwell, Ltd., Chancery-lane, W.C. 3s. 6d. net.

Fraser's Representation of The People Act, 1918-1921. A Supplement by ALEXANDER P. FACHIRI. Medium 8vo. 82 pp. 1927. Sweet & Maxwell, Ltd. Paper. 6s. 6d. net.

Copinger on the Law of Copyright in Works of Literature, Art, Architecture, Photography, Music, and the Drama, including Chapters on Mechanical Contrivances and Cinematographs, together with International and Colonial Copyright, with the Statutes relating thereto. Sixth Edition. F. E. SKONE JAMES, B.A., B.C.L. Medium 8vo. pp. xx and 607 (with Index). Sweet & Maxwell, Ltd. Cloth. £2 2s. net.

Supplement to The Law of Income Tax (Third Edition), containing an account of the changes made by The Finance Act, 1926, with the text of the Act (Part III). E. M. KONSTAM, K.C. 1927. pp. vii and 62. Paper. Stevens and Sons, Ltd; Sweet & Maxwell Ltd. 3s. net.

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W. P. H.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of the paper only, and be in triplicate. Each copy to contain the name and address of the Subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

SETTLED LAND—TENANT BY THE CURTESY.

719. *Q.* By a conveyance of the 8th March, 1882, freehold property was conveyed to E W, spinster, in fee simple. In the same year she married one J E, and there were issue of the marriage two children, a son and daughter. E W died some years ago intestate, leaving her husband J E tenant by the curtesy. J E, the husband, died on the 5th October, 1926, intestate, but the son and daughter, the issue of the marriage, are still alive. As the mother died before the 1st January, 1926, it is presumed that the eldest son takes the property upon the death of his father in October last. In whom is the legal estate vested, and what documents are necessary to put the title in order, and who would be the person to effect a sale, if necessary?

A. On the 1st January, 1926, the land was settled land, J E being the tenant for life: S.L.A., 1925, s. 20 (1) (vii) (3) Hence the legal estate became vested in J E by virtue of L.P.A., 1925, 1st Sched., Pt. II, paras. 3, 5, 6 (*c*). Letters of administration must be taken out in respect of J E's estate—the son and daughter (or son alone) can apply, and as there are no S.L.A. trustees of the settlement they (or he) will obtain a general grant including the settled land. Then they (or he) can execute an assent vesting the settled land in the son, who is the person entitled thereto.

WILL NOT PROVED—DEATH OF SURVIVING TRUSTEE APPOINTED BY THE WILL—TITLE.

720. *Q.* A testatrix who died in 1888 by her will appointed A, B and C her trustees, and devised to them her real estate upon trust for C for life, and at her death to be equally divided between testatrix's children or their issue. No executors were appointed, and as the personal estate was very small the will was never proved. Succession duty was paid on the real estate. A, B and C are now dead. C died last month, having made a will and appointed executors. It is now desired to sell the property, which consists of two small freehold cottages. Can C's executors make a good title, or will it be necessary to take out letters of administration with the will annexed of testatrix's estate?

A. Letters of administration with the will of the testatrix annexed must be taken out. The administrators will then be able to make title.

UNDIVIDED SHARES—ONE SETTLED—VESTED IN ONE SET OF TRUSTEES—LUNATIC PRESENTLY ENTITLED TO BOTH SHARES—TITLE.

721. *Q.* Land in two undivided moieties was conveyed in 1888 by two maiden sisters to trustees on certain trusts, and, in the events which have happened, on the 31st December, 1925, the equitable interest in the whole of the land was in the possession of one of the sisters, as to one undivided moiety in fee simple, and as to the other undivided moiety as tenant for life, while the legal estate was in one of the trustees, the second trustee having died. The equitable estate owner at the 31st December, 1925, was a lunatic not so found, but no receiver has been appointed. There is no power of sale under the settlement. It is suggested by the vendor that by the L.P.A., 1925, Sched. 1, Pt. IV, para. 1 (3), provision is made by which the property is vested in the trustees of the settlement under the statutory trusts which include a trust for sale, subject, of course, to the provisions as to the Public Trustee, as there is only one trustee living. It is further suggested by the vendor that if another trustee is appointed, the land can be dealt with even though the beneficial owner is a lunatic.

Would a title made by two trustees in such circumstances be good, the purchasers having knowledge that the beneficial owner is a lunatic, or are proceedings for the appointment of a receiver in lunatic necessary?

A. Since both shares are not settled, the entirety is not settled and the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (3), does not therefore apply. But since the entirety of the land is vested in the surviving trustee the opinion is here given that, notwithstanding the two shares being now equitably vested in one person, para. 1 (1) applies, and the surviving trustee therefore holds on the statutory trusts for sale. If, therefore, a co-trustee is appointed to give receipt in accordance with the T.A., 1925, s. 14 (2) (*a*), and the L.P.A., 1925, s. 27 (2) (each as slightly amended under the L.P. (Am.) A., 1926), the title will be in order. If the surviving trustee has power to appoint no difficulty arises, but if the power is vested in the lunatic the court must be invoked as in *Re Shortridge*, 1895, 1 Ch. 278.

VENDOR AND PURCHASER—VENDOR IN POSSESSION—DUTIES.

722. *Q.* A, the owner and occupier of a freehold dwelling-house and garden, has contracted to sell the property to B. The sale is subject to the "National Conditions." A now purposes holding upon the property a sale by auction of his furniture and effects. There is no reservation in the special conditions of a right for the vendor to hold a sale by auction on the property. B objects, contending that, in the absence of a condition empowering him to do so, a vendor cannot, after contract, hold a sale by auction on the property sold. Apparently B's objection is based on the duty of the vendor to take reasonable care to preserve the property pending completion, and, no doubt, a sale by auction would tend to deteriorate the property. The garden is in excellent order and is very tastefully laid out. If B is right in his contention, could A be restrained, by injunction, from holding the contemplated sale by auction, or would B have a right of action for damages only? Authorities will oblige.

A. The law generally as to the duties of a vendor in possession pending completion, with references to authorities, will be found in "Williams V. & P.," 3rd ed., pp. 493-4. The opinion is here given that, in the absence of very special circumstances, e.g., unless there is a quantity of valuable and delicate statuary attached to the inheritance, and reason to suppose it might be irretrievably damaged—the purchaser would not be granted an injunction. The case seems eminently one for arrangement, if both sides are reasonable. The hiring of a few posts and ropes, and a watcher or two, possibly even a policeman in uniform if he can be procured, would be cheaper than litigation as to trampled flower-beds. *Prima facie*, the vendor is entitled to hold an auction if he does not allow the inheritance to be damaged.

LAND SUBJECT TO LIFE ANNUITY ONLY—DEATH OF ANNUITANT—TITLE.

723. *Q.* In 1905 freehold property was sold in consideration of an annuity payable to the vendor and her husband. The property was conveyed unto the purchaser in fee simple to the use that the annuitant during her life and after her death to the use that her husband during his life might receive a certain annual sum. And subject thereto to the use of the purchaser in fee simple. The annuitant died a few days ago, and her husband predeceased her, having died before 1926.

(*a*) Is it necessary for any vesting deed or other document to be executed—in other words was a settlement created by the Settled Land Act, 1925?

(*b*) Are we right in assuming that the purchaser can now dispose of the property as beneficial owner?

(*c*) What death duties are payable and by whom?

A. (*a*) No. The S.L.A., 1925, s. 1 (1) (v) does not apply to charges for valuable consideration.

(*b*) Yes.

(*c*) The contract to pay the annuity being made for valuable consideration, death duties are not payable on its cesser; see S.D.A., 1853, s. 7 and F.A., 1894, s. 3 (1).

DEATH OF TENANT FOR LIFE—SPECIAL REPRESENTATION, NEED OF.

724. *Q.* By her will dated the 2nd August, 1906, A having appointed one executor only, devised property to B, his heirs and assigns, and other property to C, without any words of limitation. After these devises, the will reads as follows: "All rents and profits arising from all the aforesaid properties I give and devise to my husband D as tenant for life." A died in 1910, and D in November, 1926, without any property. Are both properties settled land within the meaning of the L.P.A., 1925, and is it necessary to take out special representation on D's death?

A. Both questions are answered in the affirmative. D took the legal estate on 1st January, 1926, by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*), and it can only be dealt with by his special representatives—under the A.E.A., 1925, s. 22 (1) if he died testate, or the J.A., 1925, s. 162, if he died intestate.

UNDIVIDED SHARES—DEATH OF OWNER OF ONE SHARE—TITLE.

725. *Q.* Prior to 1926 three cottages were owned by A, B and C respectively, and A, B and C together held adjoining land in undivided third shares. In August, 1926, A died intestate, a widower, leaving several children, and his two eldest sons, M and N took out letters of administration to his estate, which includes one of the three cottages and the above-mentioned undivided third share of land. M and N have now agreed with the other children of A to purchase the cottage and the undivided third share of land all previously belonging to their late father. No difficulty arises in conveying the cottage, but having regard to the provisions of the L.P.A., 1925 relating to tenancies in common, how can the undivided third share in the third share in the land be dealt with?

A. The beneficial interest in A's share under the trust for sale on which the adjoining land is held pursuant to the L.P.A., 1925, 1st Sched., Pt. IV, can be purchased by M and N; the parties to the conveyance will be the other children of A and the purchasers. It is advisable that B and C should then appoint M and N to be additional trustees for sale. There will be no need for a vesting declaration in the deed of appointment: T.A., 1925, s. 40 (1) (*b*).

UNDIVIDED SHARES—CONVEYANCE OF BENEFICIAL INTERESTS TO OWNER OF A SHARE—TITLE.

726. *Q.* A purchased a house in May, 1923, the purchase money being provided by A and B in equal shares, but the property was conveyed to A absolutely. In August, 1923 A executed a declaration of trust that the property was held by A upon trust in equal shares for both A and B. B died in October, 1926, and devised the whole of her estate to A, C, D and E in equal shares. B was the mother of A (daughter) and C, D and E (sons). Probate to B's estate was granted to A, C, D, and E (executors). C, D and E wish to give to A B's share in the property. How should this be carried out?

A. B's equitable interest under the statutory trusts upon which A now holds the land is vested in A, C, D and E as executors. C, D and E should convey their beneficial interests to A, who will thereby become entitled to the land in law and in equity. She will then be in a position to make a good title. In such a case equitable interests will appear on the title, but the case is one in which that is proper.

AGRICULTURAL LEASE—OPTION TO RENEW—BREACH OF COVENANT.

727. *Q.* A in 1919 granted B a lease of certain farm lands for a term of seven years at £110 per annum; B covenanted (*inter alia*) as follows:—

(1) Keep the farmhouse and buildings in good condition and substantial repair and leave same so at end of tenancy, and at proper times lay out and keep repaired all hedges, gates and fences, and to leave same property repaired at end of tenancy.

(2) Shall cultivate the farm in a husbandlike manner so as not to impoverish any part thereof, and shall leave the same at the end of the tenancy in good heart and condition.

(3) Mutual agreement that Agricultural Holdings (England) Acts, 1883 to 1900, shall not apply to the said lands hereby demised.

(4) Usual provision for re-entry on non-payment of rent.

(5) Lessee has option on giving six months' notice to renew lease on same terms.

Since B took hold, the covenant to keep the hedges, gates and fences has not been observed, and at the present time everything appears to be in disorder. During the term A has asked B many times (verbally) to do the repairs, but these have never been done. Also the covenant as to cultivation has been broken; on the farm there is a fair amount of pasture land; cattle have not been put on, with the result the grass has become coarse (more like marshy grass) and really not now good for grazing purposes. B has never paid his rent to time all during the lease. The lease expired on the 29th September, 1926. B has given his requisite notice to renew for another six years and nine months. A, seeing the state the land is in, does not want to grant a renewal. Can B enforce us to grant the renewal, taking into consideration the breach of the covenants (*Hill* v. *Barclay*, 1811, 18 Ves. 56)? If B cannot enforce the renewal, has he become a tenant from year to year by holding over on the expiry of the lease, and if so, does the Agricultural Act, 1923, apply as to giving notice, taking into account the clause precluding the previous Holdings Acts? What is the best procedure to adopt (1) to instruct a surveyor to estimate the damage and sue him for damage, or (2) bring an action for recovery of possession? Are any notices to quit required? If B can enforce the option on same terms as old lease, what is our position? Have we any remedy? A, the landlord, if a new lease is granted, wants to add extra clauses. I presume this cannot be done. I might state it is rumoured B is not financially sound; if we could bring an action for damages or recovery, how should we stand with regard to costs if we succeed and B is unable to pay?

A. Reliable advice on an option to renew can hardly be given without knowing the terms of it. A properly drawn option should make the renewal conditional on the payment of rent and performance of covenants, which would here place the lessee out of court at once. Indeed, specific performance of an option has been refused for want of repair even when the option was unconditional (see *Nunn* v. *Truscott*, 1849, 3 De G. and Sm. 304), and the opinion is here given that, even if the option is in terms unconditional and the tenant is in time in giving it, he cannot enforce it unless and until, in accordance with the principles of equity, he has paid up all arrears of rent and placed the land in good heart and condition within his covenant. If this is so, the tenant has no right of possession under his expired lease, unless possibly by local agricultural custom. If there is no such custom he may be required to give up possession and treated as a trespasser if he fails to do so. As to forcible dispossession, see *Hemmings* v. *The Stoke Poges Golf Club*, 1920, 1 K.B. 720. Otherwise, having regard to the rent, the landlord can only recover possession by an action in the High Court. For certain purposes landlord and tenant cannot contract out of the Agricultural Holdings Act, 1923, see s. 50, but here no question can arise on the tenant's right to compensation since he has let down the farm.

UNIVERSITY COLLEGE.

RHODES LECTURES:

"The Judicial Committee of the Privy Council and Unity of Law in the Empire."

By Professor J. H. MORGAN, K.C.

LECTURE No. 2.—(*Continued from page* 231.)

The Right Hon. Lord Birkenhead, K.G. (Secretary of State for India), presided at the Second Rhodes Lecture, University College, on Friday, March the 11th.

In one direction, and one alone—perhaps I should say two—has our administration of native law been revolutionary. There are two great principles which we have applied throughout our Empire to all the alien systems of law that we have naturalised within it. One is the principle of personal liberty, in virtue whereof slavery, though recognised by Mohammedan law, has not been allowed to survive. The other is the principle of religious liberty—you will find a classical exposition of it in the judgment of the Privy Council, delivered by Lord Moulton, in the case of *Despatie* v. *Tremblaye*, a case from Quebec. Now the situation we encountered in India was, as one would expect in a country where so much of legal usage rests upon religious sanction, that change of religion involved forfeiture of property and loss of inheritance. We could not allow that. Hence the great Freedom of Religion Act, better and more significantly known as the Caste Disabilities Removal Act of 1850, which laid down the principle that no man, whether Hindu or Mohammedan, should suffer any forfeiture by his conversion from the one faith to the other. The result of that Act is that if one of two Hindu brothers becomes a convert to Mohammedanism, his conversion does not operate as a forfeiture to the other brother of his share in the joint family property. What it does operate to do is to effect a legal separation of the family, and one-half of the family property immediately vests in the convert. That may be taken as the general rule, but the situation is not quite so simple as all that. I will not attempt to go into the intricate questions of what happens in such cases where the convert, at the time of his conversion, is in possession of property which is at once heritable and inalienable. Far more interesting is the extraordinary illustration of the operation of custom in India on what seems at first sight a simple rule, namely, that in adopting a new religion the convert adopts a new system of law and that his after-acquired property, at any rate, will descend according to the law of the faith which he has adopted. That is the rule, but it is subject to the exception that a man may adopt a new faith and yet retain his old law, and his family may set up the custom of the family to this effect to rebut the presumption that, in changing his faith, he has changed his law. Even a Hindu convert to Christianity may retain, or perhaps I should say he might retain, until the Indian Succession Act, 1865, his Hindu law, or, as the case may be, might not retain it. There was a classical judgment of the Privy Council on that point. In Indian law it is always difficult to say where religion ends and law begins.

Even the Penal Code has found it necessary to take notice of religion. Stephen once described it as simply "the criminal law of England freed from all technicalities and superfluities," but, with all respect to so great an authority, it is far more than that. The law of bigamy, for example, for while it applies to Hindu and Mohammedan wives it does not, for obvious reasons, apply to Hindu and Mohammedan husbands. But the most important difference is in matters of religion. Religious offences—in other words, blasphemy—have almost disappeared from our own criminal law which has reduced that offence to little more than words or acts calculated to provoke a breach of the peace. Since the great case in the House of Lords, *Bowman* v. *The Secular Society*, supporting the validity of bequests for the propaganda of atheist opinion, we can no longer say, with any significance, that Christianity is part of the law of England. But in India Mohammedanism is a law as well as a religion, so is Hinduism, so to some extent is Buddhism. And if you look at Chapter 15 of the Penal Code you will find penal sanctions of great severity prescribed for offences against religious belief. Why? Because in India the slaughter of a cow, the pollution of a mosque, may rend the whole fabric of civil society asunder. That chapter of the Code, as the Indian Law Commissioners who drafted it truly remarked, is based, not on the principle of proscribing religious opinions, but of enforcing respect for them. I have read no warmer appreciation of it and its motive than in the work of a native Indian commentator, Mr. Acharyya. That problem—the problem of reconciling the due observance of one form of worship with the observance of another—is constantly coming before the courts in India and sometimes before the Privy Council. It is not merely a problem of keeping the peace between Hindu and Mohammedan but even between one Mohammedan sect and another. Only the other day their lordships had to consider whether a declaration and injunction should be granted in respect of the use of a highway by the Shias for a religious procession passing in front of a mosque belonging to the Sunnis. The resulting judgment was equivalent to a declaration that a religious sect may have a kind of easement over a public highway—a state of affairs inconceivable in English law.

Let me, before I leave this subject, say one word about the exercise of the appellate jurisdiction of the Privy Council over India. That jurisdiction is a stream fed by many tributaries, for it is not confined to British India, but extends with considerable limitations, to our exercise of foreign jurisdiction in the Native States. There are special rules governing Indian appeals, distinct from those governing the appeals from the Colonies—they are to be found in the Order in Council of February, 1920, and in the Indian Code of Civil Procedure. The outstanding difference between India and some of the Dominions is that there is no Indian Act which purports, like the Union of South Africa Act and the Irish Free State Act, to abolish the right of appeal. But, speaking generally, the rules as to Indian appeals exhibit the same elasticity as is observable in the new Rules of 1925 regulating Colonial appeals, with which I dealt in my lecture of Friday last. It is enough to say that the prerogative to grant special leave to appeal is as intact in India as it is everywhere else and every Indian, however limited his means, however lowly his status, is entitled to petition for its exercise.

I shall have failed in my purpose to-night if I have not succeeded in convincing you how scrupulous has been the loyalty of their lordships in Whitehall to the integrity of Indian faiths, Indian laws and Indian customs in the exercise of their appellate jurisdiction. To my mind, the continuance of that jurisdiction is absolutely vital, not merely to our dominion over India—I put that consideration entirely on one side—but to the interests of the Indians themselves, in other words, to the unity of their law or rather to the unity

of their legal systems. Remember that in India you have as many High Courts as there are provinces, each mutually independent of the other, and there is no such thing as a Supreme Court of Appeal for the whole of India. The result is that you may have, with disturbing consequences to Hindu society, one interpretation of Hindu law put forward by the High Court of Bengal, and quite another, and a contradictory one, put forward by the High Courts of Madras, Bombay and Allahabad. You had that state of affairs in regard to the vexed question as to whether an only son could be taken in adoption, and it was only by the aid of the Judicial Committee that, in 1899, a solution was found to resolve the conflict. Nay, more, you have on the Indian Bench Mohammedan judges called upon to pronounce on delicate questions of Hindu law, and Hindu judges on questions, no less delicate, of Mohammedan law. Far be it from me to say that they do not act with the most admirable impartiality; ill would it become me when I recall some of their learned judgments—those of Mr. Justice Mitter, for example—to question their competence. But, surely, in dealing with such delicate questions as those I have hinted at—the legal operation, for example, of conversion upon inheritance—those native judges cannot but feel themselves fortified in their responsible task by the fact that beyond the seas, in Whitehall, there is a great appellate tribunal which administers almost every system of law known to mankind and which will uphold their judgments, when they are sound, in the face of all the political, racial, religious criticism which those judgments may locally excite. Nay, look ahead! Supposing the day comes, as one school of political opinion in India prays it may come, when India is granted what is called responsible government. If that day ever comes, the form the new constitution will take must inevitably be a federal one, and it will be encompassed in that sort of strait jacket which is known as a Federal Constitution or, as Lord Birkenhead once put it, in an Australian appeal, a controlled constitution. No one who knows anything of India can doubt that. Federal, in a sense, the constitution of India, if one may call it a constitution, already is—but it is what, for want of a better word, I will call administrative federation. The distribution of powers, "transferred" in the one case, "reserved" in the other, in the provincial legislatures is not a legal distribution in the sense that it is susceptible of a definition by the courts; it is subject to the dispensing and suspending powers of the executive. Still less can the courts be invoked to decide as to the distribution of legislative power between the Indian legislature and the provincial legislatures. Indeed, the Indian Courts are, in effect, excluded altogether from the interpretation of such questions, which in the last resort are decided by the Governor-General in Council, and ultimately by the Secretary of State. The custodian, if I may use the expression, of the new Indian constitution, and also its ultimate interpreter, is the Secretary of State. You may, if you are so minded call that—but I should not agree with you—a despotic power. Remember that it is always exercised by a Minister responsible to the British Parliament and that the Rules by which he may give effect to it are strictly subject to Parliamentary control. But despotic or not, it is at least elastic—it permits of infinite adaptability, especially by the exercise of the rule-making power, to the ever-shifting play of political forces in India. But once grant India responsible government and you will have a Federal constitution with all the rigidity it implies, with all the conflicting issues of *ultra vires* between central and local legislation which it implies. And where will those Indians who desire the consummation of responsible government, then have to look, where can they look, where indeed will they wish to look, for the solution of those complex problems which will beset them except to a court, as impartial as it is remote, which has grown grey in wisdom in the interpretation of the Federal Constitution of Canada? That court is the Judicial Committee of the Privy Council. If I were, which I am not, an advocate of the immediate grant of responsible government to India, the very first thing I should do would be to secure the strengthening of the Judicial Committee for the great task which awaited it. Those who advocate the introduction of responsible government, and with it the whole of our English constitutional law, into India have a great deal to learn about this subject. The spectacle of the Opposition in the Bengal legislature seeking in the High Court, at the hands of Mr. Justice Ghose, in 1924, an injunction to restrain the Speaker, or rather the President, of the legislature from putting a motion to the House is enough to make an English constitutional lawyer's hair stand on end—nay, what is more important, it is enough to make a Canadian or an Australian lawyer turn pale. No court in England, or in any of the self-governing Dominions, would dream of entertaining such an application, for there is no rule more fundamental in our constitutional law than that which lays down that the courts will take no notice of what happens in either House of the Legislature. That rule is one of the immemorial privileges of Parliament. Indian politicians, who look forward to the time when they are complete masters in their own house, some of them in power, others of them in opposition, will find that rule as vital to their own Parliamentary government as it is to ours. Still more will they need to apply our constitutional law as to the relations between the courts and the Executive. India, under responsible government, will need a strong Executive as much as she needs it now. No country will need it more. And our own law, in many directions, recognises a discretionary power in the Executive. Our law as to *Mandamus* fully recognises it, and as for Injunctions I know of only one case in which an injunction has ever been granted against the Crown. Our courts have always insisted that to hold otherwise would involve their undertaking the government of the country. You cannot govern a country by litigation, any more than you can govern it by talk. The great mistake, as it seems to me, of Indian politicians lies in their tendency to think that you can reduce every political issue to a *lis inter partes* and take it into the courts. That is impossible. And, therefore, I would say to that school of Indian politicians who wish to assimilate without delay the constitution of India to those of the self-governing Dominions: try first to understand what those constitutions are, or you will bring upon yourselves nothing but confusion. And there is no better school of constitutional law to which you can go than the Judicial Committee of a Privy Council.

I think these words of mine are not unseasonable, for in saying them I have in mind the debates, which I have just been studying, in the Indian Legislative Assembly and the Council of State at Delhi, in February and March of last year, on a resolution to provide for a moiety of the salaries of two members of the Privy Council with Indian experience. Those members, indeed, already exist, but their salaries are at present merely nominal. The issue of those debates was unfortunate; the Lower House rejected the resolution, the Upper adopted it with some qualification. But one thing struck me in reading those debates. Even those who opposed the resolution were almost unanimous in their tributes to "the signal service," as one of them put it, which the Judicial Committee had rendered to India. "Black is their faith, but pure and blameless is their justice," once said a Moslem of us. The unfortunate result of the debates was really due to a confusion of the issue, in particular to the demand raised in some quarters for the institution of a Supreme Court of Appeal in India with power—such was the plea of the member—Sir Hari Singh Gour—who proposed the rejection of the resolution—to interpret the Government of India Act, of 1919, and in particular to decide such issues as what are "transferred" questions and what are "reserved." With all respect to Sir Hari Singh Gour, I think he committed the ancient error of putting the cart before the horse. The

establishment of a Supreme Court of Appeal in India would not exclude the continuance of the appellate jurisdiction of the Privy Council from the High Courts of the Provinces, any more than the establishment of Dominion Supreme Courts of Appeal in Australia and Canada has excluded its jurisdiction, for the simple reason that in both of those Dominions you can appeal direct, if you like, from the Supreme Courts of their constituent states or provinces—New South Wales or Ontario, for example—to the Privy Council. That right of direct appeal is greatly prized by the Australian States and the Canadian provinces, and I cannot imagine that, if a Supreme Court of Appeal were erected in India, the inhabitants of Bengal, or Bombay or any other great province would be inclined to renounce altogether such an alternative right of appeal direct to the Privy Council. And the second observation I should have to make is that no Court in India, whether it be a new Supreme Court of Appeal for the whole of British India, or one of the existing High Courts, could usefully be invoked—even if the Act of 1919 allowed it, which it does not—to determine such questions as what are "transferred subjects" of administration and what are "reserved." For good or for ill, the so-called "dyarchy" system is not one in which any court could exercise jurisdiction. As that Act stands, the classification of central and provincial subjects, of reserved and transferred subjects, is what the Supreme Court at Washington would call a "political" subject, using that term in its technical sense as something which no more admits of juristic definition than does the word "republican" in the American Constitution. If you look up the American cases, you will see that the Supreme Court has always declined to intervene in such questions, holding that they are a matter for the legislature or the executive. And so here—"Dyarchy" may be a good thing or a bad thing, but in no sense is it a legal conception. It is not only purely experimental, empirical in fact, but it lies wholly within the discretionary sphere of the Indian Executive and the Secretary of State under his responsibility to Parliament. It is no more capable of adjudication by the courts than is the withholding in this country of a Parliamentary grant-in-aid by the Board of Education. I will not express any opinion on its political merits—I will only record a passing protest, not against the thing, but against the name. Of all words in our political vocabulary; it is the most ill-conceived. I sometimes think that it was begotten by pedantry out of anarchy.

Reading those Indian debates, I have reflected how much I would like to have had half an hour's talk with Sir Hari Singh Gour and his friends for—in all modesty I say it—I think I could have taught them a good deal about the Judicial Committee which they did not know. They complained, for example, that it rarely, if ever, quashed a conviction by the Indian courts on the hearing of a petition for special leave to appeal. True enough, but neither does it in the case of such a petition from the Dominions. And why? Mainly because, as I pointed out here a week ago, the Judicial Committee wish to establish, preserve and develop the confidence of British possessions in their own administration of criminal justice—in other words to maintain the autonomy, if I may use the word, of the local courts. And there again I say to those of this school of Indian politics, look ahead! Your Bar is now almost completely Indianised, the same grows every day more true of your Bench; you look forward to responsible government—do you then desire the Privy Council to set a precedent for interference in your criminal jurisdiction which it has never set and never applied in the case of the Dominions? It often seems to me that in all these arguments of this school of Indian politics its disciples are destroying the very foundations—namely, a strong executive, an independent judiciary, a legislature with an independent Speaker—on which, if they want to realise their constitutional aspirations, they must build.

Many years ago—they seem almost prehistoric now—a Native Member, as he was called, was admitted to the Council of the Viceroy. The Secretary of State who was responsible for that innovation was one whom, to my great honour, I knew as probably few men knew him—Lord Morley. And he told me that when he brought that innovation before the Cabinet he had to contend, first with the whole of his Council, and then with nearly the whole of the Cabinet, including the sustained opposition of an ex-viceroy and a former Secretary of State for India. The change was regarded not as a change but as a revolution. How small a change it seems in comparison with all that has happened since! If you look at s. 96 of the Government of India Act you will find these words: "No native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour or any of them, be disabled from holding any office under the Crown in India." That section is not a dead letter. Effect is being given to it every day. And in view of it, one may well ask whether this is the time, this the occasion, to lay down any hard and fast rule that particular members of the Judicial Committee shall be Indians by birth. This was what the Opposition in the Legislative Assembly at Delhi demanded last year as the price of their approval to increase the emoluments of two members of the Judicial Committee with Indian experience. Such a discrimination seems to me an act of apostasy from the principle of section 96. India wants, and is entitled to have, the best men she can get, irrespective of colour, race or creed. If you were to apply to the Privy Council, or, indeed, to the Indian courts, the principle that each race, community or creed should have its own judge, you would, as the Hon. Sardar Charangit Singh very forcibly observed in those debates, have to appoint at least twenty new judges every time there was a single vacancy on the Indian Bench or in the Judicial Committee. I have no doubt that all practising barristers, whether European or Indian, would view such a prospect of promotion with the most lively satisfaction, but it would be a heavy charge on the unfortunate tax-payer. It would be a very bad day for India if, having begun to remove all racial disabilities as against one or more races, we began to reimpose them in respect of another. It would be a retrograde step. And having said so much, let me, before I leave that aspect of the subject, draw your attention, as I have said so much of codification, to an Act of immense significance, which is one of the first fruits of the grant of representative institutions. I refer to a change in the Criminal Procedure Code. Only three years ago there was enacted in India a statute which, although it escaped all notice over here, is, to my mind, far more revolutionary than the Montagu-Chelmsford reforms. I refer to the Criminal Law Amendment Act of 1923, better and more significantly known as the Racial Distinctions Removal Act. That Act has abolished every privilege in criminal procedure based on distinctions of colour and race. That, I submit, is the true line of deveolpment. For the rest, I should feel inclined to say to my Indian native friends—and I have many—"Do not try to run before you have learned to walk! *Externally* you already have what you call Dominion status. Fiscally, with the abolition of the cotton excise, you have achieved an autonomy not inferior to that of the Dominions themselves. All the statutory restraints on the freedom of your Indian legislature to debate foreign affairs have disappeared. You have taken your place alike in Imperial Conferences and in the Assembly of the League of Nations, but you have still to work out your own salvation, in the composition of your internal dissensions, and until you have done that you have a long way to go. Someone has said that in no Indian vernacular is there a word for Indian, and that such a conception does not exist. If we left you to yourselves at this moment, there is a power—a power of evil—hovering near your frontiers who would fall upon you and say: 'This is the heir, come! Let

us kill him!' Within your country and upon the frontiers of it, vast subterranean movements are at work which call, as much in your own interest as in ours, for constant vigilance, for prompt action, for delicate discretion in Whitehall."

The peoples of the East are in a few years passing through changes after the sleep of centuries, so precipitate in their transit that they resemble the rush of a comet through space. Turkey in a few years, I had almost said a few months, is being transformed from a theocracy into a modern state; she has abolished the Khalifate and expelled the Patriarchate, and she is going to Switzerland for the law of her secularised state. Persia has ceased to be a British sphere of influence; Afghanistan is no longer subject to British suzerainty; India, in Burke's immortal phrase, is going through great varieties of untried being. Catastrophic forces are at work, and brooding over this feverish scene, with its tentacles spread over the whole of the East, there is a power, malevolent, sinister, calculating, ruthless, which seeks everywhere to undermine both religion and law. To her all religions are, to vary Gibbon's phrase, equally true, equally false, and equally useful. For her the colour problem only exists in order to exploit it. These, you may say, are purely political issues, but you cannot ignore them when you are considering the problem of what I may call legal stability, still less the problem of constitutional stability in India.

I have said little—I could say much, but time does not permit of it—about the Secretary of State for India. You may be surprised to hear that Lord Birkenhead is not only a natural person but a fictitious person. In the language of Coke, he has both a natural capacity and a politic capacity. The vitality of his natural person is, fortunately for our country, very high, but if I am to accept the words of a learned judge in the case of *Frith* v. *The Queen*, the vitality of his politic person is very low. For, although the Secretary of State for India in Council has been made a body corporate, capable of suing and being sued, the learned judge in that case declared that there really is in point of law no such person. I doubt if the Judicial Committee would uphold that *obiter dictum*. The Secretary of State in Council is an extremely potent person and exercises an appellate jurisdiction of his own, which their lordships of the Privy Council have repeatedly recognised, and with which they will not interfere. In 1906 two great cases came before the Privy Council in the form of petitions by certain persons in the province of Kathiawar for special leave to appeal, in one case direct from the orders of the Political Agent therein, in the other from the Governor of Bombay in Council, within whose jurisdiction the territory of Kathiawar was and is. The Judicial Committee granted the petitioners a hearing, with leave to the Secretary of State to intervene; inasmuch as the Secretary of State in Council had already reviewed the decision of the Governor of Bombay in Council. It was just such a case of high prerogatives as Bacon would have delighted to argue, and, had that illustrious predecessor of Lord Birkenhead on the Woolsack appeared for the India Office, he would, I think, have apostrophised the Secretary of State in much the same language as he used of the King in his famous argument in *De rege inconsulto*: "What a garland of prerogatives doth not the law put upon his brow!" And so decided their lordships. This territory, they said in effect, is no part of British India; it is a native State wherein the Crown exercises but a foreign jurisdiction, and that not a judicial jurisdiction but a political one; these acts complained of are Acts of State; the Secretary of State in Council has spoken and his word is law. There have been other cases to the same effect—the deposition of a Maharajah was one—and in such cases the Privy Council will not interfere. Appeals by British subjects from the Courts of British Residents, exercising foreign jurisdiction in the judicial sense, in the native States, they can and will hear. But when you think of India you must not think only of *British* India, in other words of territory where the King has ownership as well as lordship. You must never forget the vast number, over 700 in fact, of native States, great and small, some great as any palatinate of the Middle Ages, others small as a mediæval manor, but all of them foreign territory subject to the suzerainty of the Crown and the political jurisdiction of the Secretary of State.

But it is time, and more than time, for me to make an end. I cannot hope in a single lecture on so great a theme to have done more than indicate its magnitude. But one thing I hope I have succeeded in doing and that is to have brought home to you how faithfully, I think I might say how nobly, this nation has discharged its duty of maintaining in India at one and the same time the principles of equity, justice and good conscience and the sanctity of native law. If England had done nothing more than that for India she would have done much. But she has done far more. It may be that the British Dominion in India is destined in the course of time to pass away. The Empires of the ancient world—of Rome, of Athens, of Carthage, and of Babylon—where indeed are they? Nay, where is the Empire of the great Akbar and of Aurangzeb? But if, centuries hence, English dominion shall have vanished from the face of India into the mists of time, I think it not impossible that some pious Hindu, mindful of a great and beneficent tradition, may then make a testamentary gift in favour of the establishment and consecration of the image of a deity, a deity indeed alien to his faith but never indifferent to it, and that he will denominate that deity in his will, lest the trust be void for uncertainty, as Privy Council. Nay, more, I can imagine that some generous Mohammedan may institute a "Wukf" for the erection and maintenance in his mosque of a votive tablet, with some such inscription as this: "This to the memory of the British raj! When, in the days of famine, we were an-hungered, she gave us meat; when we were a-thirst, she gave us drink; when we were oppressed she delivered us; when we were plague-stricken, she ministered unto us; when our land was parched with drought, she brought us water from the hills even as the Israelite brought water from the barren rock; when we were torn with civil strife she kept the peace; she protected the poor, she humbled the despot, she delivered us from the usurer, she secured our frontiers, she bridged our rivers, she charted our seas, she respected our faith, she maintained our law, she loved justice and hated iniquity." (Applause.)

The CHAIRMAN: Ladies and gentlemen, I am sure that all of you will agree with me that we have just listened to a very luminous and well-informed address from Professor Morgan which is what one would have expected, because he is a specialist and has devoted very much time and attention to the study of this and similar subjects.

He has spoken to-night of the Judicial Committee of the Privy Council, principally in relation to the vast variety of topics which present themselves by way of appeal from our great Indian Dependency. He has not exaggerated the range and the variety of those topics, nor I think has he exaggerated the care which is bestowed upon these problems by the Judicial Committee. It is not for me to commend them, because I presided over that Committee whenever I sat as a member for four years, and I am still a qualified member, though disabled at the moment from discharging judicial duties. I mention this circumstance only to make it evident that from whatever source eulogies may be expected, they cannot be expected from the individual who addresses you at this moment. I therefore limit the praise which I give to that Committee to the industrious care with which it attempts to appreciate the problems which are brought before it and to adapt its minds to conceptions alike of civilisation and of theology which are both novel, strange and bewildering.

In the main, I am satisfied that the Committee has succeeded, and indeed only a year ago at a moment when many influential elements in India were not very favourable to this country a rather striking testimonial was given by a very prominent

Swarajist leader to the appeal to the Judicial Committee. He plainly said—and I think he spoke with representative authority for his followers—that they greatly valued and would most unwillingly abandon the appeal which existed to-day to the Judicial Committee.

I do not, of course, pretend—it would be ludicrous to do so—that in dealing with topics so various and so complicated, a fallible human institution has always been right. I happened to sit very rarely in Indian appeals, and I therefore can speak upon this point quite frankly. I have always myself been amazed that so few mistakes have been made by the Judicial Committee in dealing with topics so difficult and so remote. If Professor Morgan were to apply his industry to an examination of the past in this regard, he would, I think, be surprised, and would surprise you with the rarity of the occasions on which an important Indian court has been dissatisfied with the decision of the Privy Council.

It does not become me at this moment to speak of the personnel of that Committee in any but the most general manner. I must, however, say that there are men serving upon it whose names are not essentially well known to the general public who yet have rendered great services to the British Empire. I should indeed surprise you I think, if I were to illustrate the meritorious and veteran character of their services by giving you their collective and average ages. I will not do so. But the members of that Committee themselves would be the first to say that the time had come when some reinforcement was required; and I anticipate that we may in the future, the not very remote future, be confronted with proposals which have that object. It is proper that we should remember the services rendered over a period of time so long by veterans like Lord Finlay, Lord Haldane (twice Lord Chancellor), Lord Dunedin, Lord Sumner, and others. Indeed, it is a little unfair to begin an enumeration of the names of those who have laboured so brilliantly and so fruitfully in the interpretation of the varied jurisdictions of India, because if one mentions one name, others at once occur to the mind who are equally entitled at a moment like this, to be remembered.

Ladies and gentlemen, I have only this to add. Nothing but a very useful purpose can be served by the series of addresses to which Professor Morgan has invited your attention in this course. The ordinary citizen does not know as much as he or she might usefully know about the diverse functions of the Judicial Committee; and yet I have long taken the view that among the intangible, indefinable, incalculable elements which keep together the strange organism which men call the British Empire, one of the most influential is the Judicial Committee of the Privy Council, and the respect and the regard which is paid to that body throughout the whole Empire. It is indeed the most powerful cement which any concentrated aggregation of communities, united indeed under the Crown, but yet each pursuing its own life with such substantial independence, could have; and it is indeed an amazing additional bond of union to that of the Crown, which is vital and elementary, that there should be a common conception of jurisprudence, that there should be one authoritative and dignified tribunal qualified in various appellate matters, and in circumstances which are declared suitable for that jurisdiction, to give decisions which are recognised as binding all over the Empire, and which keep alive the immense unity of a common view of the law. Such a body is the Judicial Committee of the Privy Council. It has, I believe, in the main adapted itself with a very great degree of modernity to the developing conditions of the world.

It is the business of an intelligent Judicial Committee to form a judgment of the extent to which a particular dominion desires that its own decisions should be the subject of examination, possibly of corrections. Some dominions—I need not particularise or explain more closely—are jealous of encroachments upon their own courts; or—if I might state it in a different way—on the whole are very desirous that the occasions of intervention should be limited to really grave matters; and the path which the Judicial Committee has to tread in these matters is very often one of great delicacy. We had some discussion upon these topics at the recent Imperial Conference, and I am glad to recall that in matters so delicate and in some respects so disputable in an assembly which was attended by the representatives of all the dominions, so large a measure of essential unity was attained. Now ladies and gentlemen, I am not the speaker here to-day. We have listened for nearly an hour to an admirable lecture from Professor Morgan and I am sure that all of you will share my hope that these lectures when completed may be put by him in a more permanent form in order that they may be accessible for the study of larger audiences even than those which have assembled within this hall. (Loud applause.)

Lord CHELMSFORD: Ladies and gentlemen, I am going to ask you before you leave to pass a very hearty vote of thanks to our chairman to-night, Lord Birkenhead. As chairman of the College Committee, it is a great pleasure to me to welcome him here on his first visit to University College; and I hope that this visit will induce him to pay us another.

I feel sure that you all appreciate that his presence here to-day in his double capacity as Secretary of State and an ex-Lord Chancellor, is peculiarly fortunate for the lecture that we have had from Professor Morgan. Those of us who remember Lord Birkenhead as Lord Chancellor, and the high distinction with which he filled that great office, are glad to think from his presence here to-day at a legal lecture that he has not altogether abandoned his first love, the law. I wish you, ladies and gentlemen, to pass this vote of thanks with acclamation. (Applause.)

The CHAIRMAN: My Lord Chelmsford, ladies and gentlemen. It is not necessary for me to say more than that I am very grateful to you for receiving in the way you have done the kind observations made by my old friend, Lord Chelmsford. There was no occasion at all to thank me, because I have thoroughly enjoyed my visit and the occasion of that visit. It is quite true that I have never happened to come within the precincts of this distinguished academic institution before; but I share Lord Chelmsford's kindly expressed hope that I may on a future occasion revisit it. (Applause.)

Correspondence.

Probate Costs.

Sir,—It appears that the attendances mentioned in your correspondent's letter are not chargeable, because they are not prescribed by the Table of Fees to be taken in respect of non-contentious probate business, dated 5th February, 1874; which provides inclusive fees, on an *ad valorem* basis, for the ordinary business necessary to obtain a grant of probate or letters of administration, and which precludes the allowance of other "costs" in respect of the business comprised therein. (See pp. 307 and 314 "Bannehr & Porter's Guide to Costs," 12th ed.).

The attendances referred to are not inserted in the precedents given in the guide mentioned.

London, S.E.4. F. G. WORTHAM.
9th March.

Vesting of Legal Estate in Land under the Law of Property Act, 1925.

Sir,—With reference to the letter of Mr. H. Langford Lewis in your issue of the 26th ult., and the reply thereto in "A Conveyancer's Diary," we notice the statement made that if no conveyance has been made by the administrators the legal estate remains in such administrators. May we take it from this statement that it is the opinion of "Conveyancer"

that the vesting provisions of the Law of Property Act, 1925, do not operate to vest the legal estate in the persons entitled under an intestacy. We have found a contrary opinion expressed in another legal journal, and we should be obliged if "Conveyancer" would express a further opinion on this point.

Watford. PENMAN & BROWN.
28th February.

[Our view is that if an estate was fully administered before 1925, or an assent had not been made on 31st December, 1925, Pt. II of the 1st Sched. to the L.P.A., 1925, operated to vest the legal estate in the land in the person entitled to call for an assent or conveyance.—ED., *Sol. J.*]

Patent Law.

Sir,—In your issue of the 12th inst., you review a new edition of a well-known text-book on Patent Law, and specially refer to s. 32A, which enables the court to grant relief in respect of infringement of a valid claim in the specification even though some other claim may be invalid. This may fairly be described as "the Curate's Egg" clause, seeing that it allows that a patent may be "good in parts." It is a kind of *tabula in naufragio*, to use a more legal and dignified phrase.

The pity is that the Act of 1919 is such a piece of patchwork. It is not surprising that some of its provisions are still little known except amongst the inner circle of those who specialise in this important branch of law. Is it not time that there was a re-codification of Patent Law?

London, W.C.2. J. L. M. BENEST.
22nd March.

Court of Appeal.

No. 1.

Levene *v.* Commissioners of Inland Revenue.

11th, 15th and 17th February; 11th March.

REVENUE—INCOME TAX—RESIDENCE OF TAXPAYER—"RESIDENT"—"ORDINARILY RESIDENT"—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), s. 46, Sched. C, r. 2 (*d*).

A British subject who had lived in England discontinued his business here, and went to live abroad, mostly staying at hotels in the south of France. He returned to England for a considerable period in each of the material years in order to visit friends, obtain medical advice, and take part in certain Jewish religious observances, staying in hotels or with friends, having been assessed to income tax for those years.

Held, that the Special Commissioners were right in holding on these facts that the subject was both "resident" and "ordinarily resident" in the United Kingdom.

Appeal from a decision of Rowlatt, J., on a special case stated by the Commissioners of Income Tax. Mr. Levene was a British subject and was formerly interested in a financial business in London. He discontinued that business in 1911, and since that date had no occupation. He lived in Curzon Street, W., until early in 1918, when he decided to break up his establishment and to live abroad. In December, 1919, he went abroad and did not return until 10th July, 1920. Since then he was in this country for nineteen weeks in 1920, twenty-one in 1921, twenty in 1922, twenty in 1923, and twenty-two in 1924. During the remainder of those five years he was staying at Monaco and at various places in France. He and his wife had been in indifferent health, and had been advised to live in the South of France and avoid the United Kingdom in the winter months. One of the reasons for their visits to England was to obtain medical advice, and they also came to visit their relatives. Other reasons were that the appellant could take part in certain Jewish religious observances, visit the graves of his parents at Southampton, and deal with his income tax affairs. The Special Commissioners were satisfied that when the appellant left this country in December, 1919, he had formed the intention, which he had consistently carried out ever since, of living abroad for the greater part of the year, and of returning to this country each year, remaining here for considerable periods, but not for a period equal in the whole to six months in any year. Taking into consideration all the facts in regard to the appellant's past and present habits of life; the regularity and length of his visits here; his ties with this country; and his freedom from attachment abroad, the Commissioners came to the conclusion that, at least until January, 1925, when the appellant took the lease of a flat in Monte Carlo, he continued to be resident in the United Kingdom, and they dismissed the appeal. On appeal, Rowlatt, J., affirmed the decision of the Commissioners. The appellant appealed. *Cur. ad. vult.*

Lord HANWORTH, M.R., having stated the facts, said that the terms "resident" and "ordinarily resident" occurred many times in the Income Tax Act, 1918. It was difficult to attach any meaning to the word "ordinarily" as affecting the term "resident," unless it were to prevent facts which would amount to residence being so estimated on the ground that they arose from some fortuitous cause, such as the illness of the so-called resident or of some other person, which demanded his continuance at a place for a special purpose otherwise than in accordance with his usual movements. He agreed with Rowlatt, J., that it was not necessary to find a building or "seat" to find residence. There were a number of decisions on residence in various Acts of Parliament, but none of them assisted in finding its meaning under the taxing Acts. Residence must indicate something more than mere presence. His lordship then referred to *Solicitor-General* v. *Coote*, 4 Price, 183; *Re Young*, 1 Tax Cas., 57; and *Re Rogers*, 1 Tax Cas., 225. In *Cooper* v. *Cadwallader*, 5 Tax Cas., 101, an American came to Scotland regularly in the shooting season and could have come whenever he liked. He had a complete establishment, so his arrival was not for a casual purpose but in accordance with his intention and habit of life. Those cases reminded the court of the points that must not be overlooked, but they afforded no concrete definition. Probably it was impossible to frame one. A characteristic factor for consideration on the matter was to ascertain if the suggested alternative place of residence was one which the subject sought willingly and repeatedly in order to obtain rest or refreshment or recreation suitable to his choice. Another important factor was if he returned to and sought his own fatherland to enjoy a sojourn in proximity to his relations and friends. The Commissioners had acted in accordance with those principles. They had abundant material on which to base their conclusion. In his judgment they came to a right decision, and he agreed with Rowlatt, J. The appeal must be dismissed, with costs.

SARGANT, L.J., and LAWRENCE, L.J., delivered judgment to the same effect.

COUNSEL: *Latter*, K.C., and *Cyril King*; *Sir Thos. Inskip*, K.C., (S.-G.), and *Reginald P. Hills*.

SOLICITORS: *M. A. Jacobs*; *Solicitor of Inland Revenue.*

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

Lysaght *v.* Commissioners of Inland Revenue.

11th, 15th, 17th February; 11th March.

REVENUE — INCOME TAX — RESIDENCE OF TAXPAYER — DOMICILED IN IRELAND—VISITS TO ENGLAND ON BUSINESS —"RESIDENT"—"ORDINARILY RESIDENT"—INCOME TAX ACT, 1918, s. 46, Sched. C, r. 2 (*d*).

A British subject of Irish family lived in England until 1919 *and then made his home in Ireland, where he owned an estate, but came to England once a month regularly for two or three days to attend the directors' meetings of a company of which he was*

advisory director at a salary of £1,500 a year, when he stayed at a hotel in Bath. He had no house in England, and his wife never came with him.

Held (Lawrence, J., dissenting) that the subject was neither "resident" nor "ordinarily resident" in the United Kingdom, and that the Commissioners could not hold, on the facts found by them, that he was so resident.

Decision of Rowlatt, J., *reversed*.

Appeal from a decision of Rowlatt, J., on a special case stated by the Commissioners of Income Tax. The appellant, S. R. Lysaght, was born in England of Irish parents and for many years until 1919 lived near Bristol, being a managing director of John Lysaght, Limited, ironfounders and engineers, with works at Bristol and Cardiff. In 1919 he partly retired, but remained an advisory director of the company at £1,500 a year. He went to live on a family estate near Mallow, Ireland, but was in the regular habit of coming to England once a month for directors' meetings. When in England he stayed at the Spa Hotel, Bath. His wife never came with him and, though a member of a London club, he rarely went there. He occasionally went to Scunthorpe, Lincs, where the company had works, and had travelled abroad on behalf of the company. Rowlatt, J., affirmed the decision of the Commissioners, who held that the appellant was "resident" and "ordinarily resident" in the United Kingdom. The appellant appealed. *Cur ad. vult.*

Lord HANWORTH, M.R., having stated the facts, proceeded: The case appeared to be analogous to that of the merchant who went to a place to attend a market as often as that market was held; and to that of the barrister who regularly attended the Assizes at a particular town. The merchant or the barrister paid his visit to the locality where business required him. In his (the Master of the Rolls's) judgment a man might repeatedly visit a country and yet not acquire a residence, because he might go to a place to which business or duty called him and whither he resorted for such time only as that duty compelled him to remain. That was a place not fixed by himself, but was determined by other considerations than his own desire or volition—a visit which might have led him somewhere else if the path of duty had lain in a different direction. Tested by the observations or factors to which he had referred in *Levene's Case*, the present case appeared to fall on the other side of the line. There remained, however, a question which had given him some concern, and that was whether the question was so much one of fact that it was not open to the court to review the decision of the Commissioners. Rowlatt, J., felt unable to differ from them. They had found the facts and on those facts had held that the appellant was both "ordinarily resident" and "resident" in the United Kingdom for each of the years in respect of which the claim to exemption arose. They thus applied the law as they thought it should be interpreted to the facts which they had found. The course to be followed in that event had been succinctly stated by Lord Wrenbury in *Great Western Railway* v. *Bater*, 1922, 2 A.C. 1, at p. 30: "It was for the Special Commissioners to find and state all the facts . . . It was not for the court to question those facts in any way. But the question for the court was whether, upon those facts Mr. Hall held an office or employment of profit *within the meaning of the Act*. That is a question of law. What does the Act mean? What is the true construction?" Applying the decision in *Great Western Railway* v. *Bater*, *supra*, he (his lordship) was satisfied that the court could review the result which the Commissioners had held to follow in law upon the facts found. The meaning of "residence" in the Income Tax Acts must be a question of law, and upon the facts found the courts must determine whether the subject had brought himself within the terms of the exemption. The court could re-consider the case, and ought to hold that the facts found did not satisfy that meaning and constitute residence. The result was that the subject was entitled to the exemption claimed. The appeal would be allowed, with costs there and below.

SARGANT, L.J., delivered judgment to the same effect.

LAWRENCE, L.J., said he had the misfortune to differ from his colleagues. He had found considerable difficulty in reconciling the various *dicta* to be found how the court should deal with such a case. The question was whether the Commissioners and Rowlatt, J., were right in law in holding that the appellant, on the facts found, was resident in the United Kingdom. A person who came regularly to and stayed in the Kingdom for some time was, *prima facie*, a resident, and the onus was upon him to prove that he was not so. He thought the word "ordinarily" was used in contrast to "casually" or "occasionally." The case was one very near the line, and he was of opinion that the appeal should be dismissed, but as the majority of the court was of a contrary opinion it would be allowed.

COUNSEL: *Latter*, K.C., and *S. R. Benson*; *Sir Thomas Inskip*, K.C. (S.-G.) and *Reginald P. Hills*.

SOLICITORS: *Whites & Co.*, for *Clarke, Sons & Press*, Bristol; *Solicitor of Inland Revenue*.

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

Societies.

The Law Society.

TEACHING STAFF RECEPTION.

The teaching staff of The Law Society School gave their annual reception to past and present students at the Society's Hall on Friday, the 18th inst. Sir Norman Hill, Bt. (Liverpool) was the guest of honour, and the company included the President (Dr. A. H. Coley, Birmingham), Mr. D. T. Garrett, Mr. R. M. Welsford (Chairman of Education Committee), Mr. C. G. May, Mr. S. Saw, and Mr. John Withers, M.P. (members of the council), Mr. E. R. Cook (secretary), Master Chandler, Mr. J. B. Matthews, K.C., Mr. R. A. Gordon, K.C., Mr. Topham, K.C., Dr. E. Jenks, Dr. W. C. Bolland, Dr. H. R. Pyke, Dr. W. G. Hart, Mr. Hollond, and Mr. D. Hughes Parry, M.A., LL.M.

Dr. LESLIE BURGIN (late principal), in the absence of Mr. E. C. S. Wade, the principal, owing to illness, welcomed the guests, speaking of the honour which had been conferred on the profession in the selection of Sir Norman Hill as one of the five British representatives at the forthcoming conference at Geneva.

Sir NORMAN HILL addressed the students, observing that their success as solicitors would be largely measurable by the extent to which they safeguarded their clients from coming into contact with either the Bar or the Bench, though in this they could not always succeed. Occasions would arise in which disputes could not be settled, or those in which rights had to be maintained and duties enforced, when the authority of the law courts would be of the utmost value. But they would find that such occasions were the exceptions and not the rule. The reports of the cases dealt with in law courts and of the difficulties constantly arising in the industrial world might give the impression that we were a litigious and quarrelsome nation, but that would be erroneous. The social, commercial and public life of this country was based on the goodwill created by the recognition of responsibilities to others as well as of our own rights and on mutual understandings and agreements, not on conflict. And as it was with the nation so was it with their individual clients. The foundations for goodwill must be a just appreciation of all the circumstances of each particular case, and decisions or agreements which had been reached must be faithfully recorded in terms which admitted of no doubt of their meaning. In the laying of these foundations and in the construction of the understandings and agreements that were raised upon them, they, as solicitors, could do much to help. It was their work to see that their clients had regard to all the circumstances, and that they did not concentrate only on points that supported or seemed to support their own views or inclinations. They must see that due weight was given to all pertinent facts, otherwise they might be certain that those facts would make their weight tell against their client sooner or later. It might be that the failure to understand and to make due allowance for the other man's point of view would make agreement impossible, and that the questions at issue would drift into the Law Courts. It might be that it would result

in their client carrying a point or in securing an advantage to which in fairness he was not entitled; but it should be remembered that the rights that had been ignored or overridden would remain to be painfully dealt with sooner or later. It was, moreover, their work to see that the agreement that was reached or the decision that was arrived at in the absence of agreement was faithfully recorded in terms which admitted of no doubt. In the course of their work they might have to use the formulæ that were so dear to the politicians and diplomatists, expressions based on sweet reasonableness and pious hope that could be interpreted in as many ways as there were words. Such expressions at times might help in clearing people's minds in the discussion of the problem before them, but they were fatal to the clear declaration of the decisions arrived at. If used for some such purpose they either settled nothing or landed their clients in the law courts. He was afraid that all this sounded as if he held the view that recourse to the law courts was always a disaster. He did not hold that view. It was often necessary to go to the courts to obtain redress for wrongs, to settle disputes that were incapable of adjustment by agreement, and to decide the meaning to be attached to words used in the agreements that had been entered into or in Acts of Parliament. And in the conduct of our affairs we all needed the protection of the law. The nation, indeed, owed a deep debt of gratitude to the Bar and to the Bench as the upholders and vindicators of the law. But he suggested that in the ordinary every-day life of the nation it was in great measure only the mishandled jobs that got into the law courts, and the solicitor should do his best to reduce the number of these. He could do but little to make Acts of Parliament even reasonably clear and simple; but a badly-drafted Act of Parliament was a mishandled job; and documents embodying the intentions of the parties in regard to arrangements into which they had entered that had to be interpreted by the law courts had failed in their purpose; and, what was more serious, they often defeated the purpose for which they were prepared. The courts could only decide what the words used meant—they could not enquire into what Parliament, or the parties, really intended. He hoped that he had said nothing to lead them to suppose that he under-estimated the importance of the solicitor having a sound and wide knowledge of the law—that was essential if he was to keep his clients within the law. They would learn much from older practitioners, and the more they worked in harmony with the solicitor on the other side the better they would serve their client, and the more they would learn. For two opposing solicitors to exchange smart letters, or otherwise attempt to score off one another, was the worst of bad practice. Looking back on his own work, he was inclined to the opinion that their best teachers would be clients, whether they were their own or the other man's. They would come across clients who knew exactly what they wanted and why, and at the other extreme they would find clients who had only the vaguest idea of what it was they did want, and knew of no reason why they should have that or anything else. They would work for and with men who were masters in the management of their own affairs and those who were not; with men who took broad and long views, and with those who never saw beyond some immediate, and often petty, advantage. And they would come across all those types in the handling of family, industrial, commercial and public affairs, and they could learn something of their job from all of them. One of the first lessons they would learn was the one need to master all the facts that bore on the question under consideration. Their opportunities to learn would come in little just as much as in big cases. If they had been helping in the organisation of undertakings in which even millions might be involved, he knew of no better discipline than having to find out the merits of a business dispute in which but a trifling sum was in question, especially if a point of principle was at stake, or if the client was a hard business man of broad views. And generally speaking, one could get a better grasp of realities in following the small transactions. The present system of remuneration, in so far as it was based on the number of words the solicitor wrote and the amount of paper, red tape and sealing wax he used, was not only nonsense, but an insult to the profession. But whatever the remuneration might be, in every case the solicitor undertook the quality of his work must be the same—it must be the best he could give, for that he owed to himself, and it was his duty to his profession. Could any greater public work be done, or any greater public service be rendered, than in the promotion of good will and in helping to get such understandings and agreements as were arrived at kept within the law and faithfully recorded? He had taken a part in a good many international conferences in relation to law, or shipping and economic questions, and he had been struck with the fact that the English word "reasonable" was not to be translated. Before another nation or another man could be asked to do what was reasonable, one must have at least a clear idea of what the word meant. It was not easy to define the word, as we used it, and it was the word which was the foundation of most of our understandings and agreements with one another; its meaning and authority were based on the practices and traditions of a free and self-governing people, who, moreover, had read for generations, had the help of the law courts, who were determined to see justice done, and if need to be be juries of their neighbours to tell them what they thought about it. What he wanted to emphasise was that they, solicitors in their efforts to keep their clients within the law were in a special degree the custodians of the traditions of the race.

United Law Society.

A meeting of the society was held in the Middle Temple Common Room, on Monday, the 21st inst., Mr. L. F. Stemp in the chair. Mr. J. W. Morris opened: "That in the opinion of this House the case of *In re Wait, ex parte Collins*, 1926, 43 T.L.R. 150, was wrongly decided." Mr. L. Rushworth opposed. There also spoke Messrs. J. E. Harper, N. Tebbutt, F. B. Guedalla and J. MacMillan. The opener having replied, the motion was put before the meeting, but was lost by two votes.

In Parliament.

Questions to Ministers.

CHEAPER TAXI FARES.

In the House of Commons on Monday Sir F. NELSON (U., Stroud) asked the Home Secretary whether he was considering any action in regard to the present high level of cab fares, with special reference to the recent reduction of 2d. per gallon in the cost of petrol.

Sir W. JOYNSON-HICKS: Yes, sir. Quite apart from the reduction in the price of petrol, I think there is a strong case for cheaper facilities for the public. I have no desire to resort to drastic measures, but the trade have now had an opportunity for many months of putting a less expensive vehicle on the streets, and I have given clear intimation that, unless advantage is taken of that opportunity in the near future, the whole question of taxicab fares will have to be re-opened. Just before the General Strike I authorised two-seater taxicabs at lower fares. I am informed that the difficulty is in getting steel for them, but if they are not forthcoming in the near future I shall take steps to re-open the whole taxicab question.

Commander BELLAIRS (U., Maidstone): Can the right honourable gentleman do away with some of the extras?

Sir W. JOYNSON-HICKS: That is not possible.

Mr. R. MORRISON (Co-op., Tottenham, N.): If he alters the taxicab fares will that not be a handicap on the two-seaters when they are placed on the streets?

Sir W. JOYNSON-HICKS: Honestly, I am getting a little tired of waiting for them. Unless I am satisfied they are coming on at once, I shall assume that they are not coming at all.

Legal Notes and News.

Appointments.

The King has been pleased to give directions for the appointment of EWEN REGINALD LOGAN, Esq., M.A., Barrister-at-Law (Chief Justice of the Supreme Court of The Bahamas since 1925), to be Judge of the High Court, Northern Rhodesia. Mr. Logan was called to the Bar in 1899 and joined the Middlesex and North London Sessions in the following year. He entered the Mines Department of the Transvaal Government in 1901, was Assistant Resident Magistrate, Transvaal, from 1902 to 1904, Magistrate, East Africa Protectorate, 1905–14; Chief Justice of the Supreme Court, Seychelles, 1914–20; administered Government of Seychelles July, 1916, to March, 1917, and May to October, 1918; and a Puisne Judge of the Supreme Court of the Gold Coast, 1920–25.

The King, on the recommendation of the Lord Chancellor, has approved the names of the following for appointment to the rank of King's Counsel: Sir THOMAS WILLES CHITTY, Bart., and Messrs. EDWARD WILLIAM HANSELL, ST. JOHN GORE MICKLETHWAIT, AUBREY TREVOR LAWRENCE, JOHN ARCH GREENE, JAMES WILLOUGHBY JARDINE, CONWAY JOSEPH

CONWAY, JAMES BENJAMIN MELVILLE, REGINALD POWELL CROOM-JOHNSON, EDWARD AYLMER DIGBY, DENIS NOWELL PRITT, and The Hon. RICHARD STAFFORD CRIPPS.

Sir Thomas Willes Chitty retired last October from the Senior Mastership of the King's Bench Division. He had been Senior Master and King's Remembrancer since 1920 and is now in his seventieth year. Mr. Edward William Hansell has been Recorder of Maidstone since 1917 and is now in his seventy-first year. The Hon. Richard Stafford Cripps is the fourth son of Lord Parmoor.

Mr. PAUL LACHENAL, a Geneva advocate and president of the Geneva Grand Council, has been appointed by the Council of the League of Nations as president of the German-Polish Mixed Arbitration Court.

The Attorney-General has made the following appointments:—

Mr. JOHN HERBERT STAMP, Barrister-at-Law, of No. 11, New Court, Carey-street, W.C.2, to be Junior Equity Counsel to the Board of Inland Revenue, the Charity Commissioners, and the Board of Education in charity matters, in succession to Mr. Charles Stafford Crossman.

Mr. HAROLD OTTO DANCKWERTS, of No. 6, New-square, Lincoln's Inn, W.C.2, Barrister-at-Law, to be Junior Counsel to the Ministry of Agriculture and Fisheries and the Office of Woods in Chancery matters.

Mr. Stamp and Mr. Danckwerts were called by Lincoln's Inn in 1898 and 1913 respectively.

WESTMINSTER BANK.

The Westminster Bank announces that Mr. Robert Hugh Tennant, deputy-chairman, has been elected chairman of the bank, and that the Hon. Rupert E. Beckett has been elected to succeed him as a deputy-chairman.

Professional Partnerships Dissolved.

WILLIAM EDMUND SLAUGHTER, JOSEPH COCKSHUTT, and EDWARD JOSEPH SLAUGHTER, solicitors, 7, Arundel-street, Strand, W.C.2 (Slaughter, Colegrave, and Cockshutt), by mutual consent as from 28th February, so far as concerns W. E. Slaughter, who retires from the firm. J. Cockshutt and E. J. Slaughter will continue to carry on the business under the style of Slaughter, Colegrave, and Cockshutt.

HARLOWE THOMAS FORD TUCKER and WILLIAM HENSHAW RICHARDSON, solicitors, Manchester (Tucker, Tucker, and Richardson), by mutual consent as from 31st December, 1926. W. H. Richardson will continue to carry on the business under the style of Tucker and Richardson.

"UNWRITTEN LAW" PLEA IN CALCUTTA.

A plea of the "unwritten law" was raised in the Calcutta High Court on Tuesday last by Kharag Bahadur Singh, a young Ghurka student of high parentage, who is accused of the murder of Hiralal Agarwalla, a rich Marwari merchant. In a statement made at the close of the evidence the Ghurka said that he did strike Hiralal Agarwalla, but that he was convinced his action was morally right. The dead man had corrupted his sister. If the judge and jury thought that it was not his duty to defend the honour and chastity of his sister, and that he was a greater danger to society and the State or to the domestic peace and happiness of homes than was Hiralal, he begged them to inflict on him the utmost punishment.

Court Papers.

Supreme Court of Judicature.

Date.	ROTA OF REGISTRARS IN ATTENDANCE ON EMERGENCY ROTA	APPEAL COURT No. 1.	MR. JUSTICE EVE.	MR. JUSTICE ROMER.
Monday Mar. 28	Mr. Hicks Beach	Mr. Ritchie	Mr. More	Mr. Jolly
Tuesday .. 29	Bloxam	Synge	Jolly	More
Wednesday . 30	More	Hicks Beach	More	Jolly
Thursday .. 31	Jolly	Bloxam	Jolly	More
Friday April 1	Ritchie	More	More	Jolly
Saturday .. 2	Synge	Jolly	Jolly	More

Date.	MR. JUSTICE ASTBURY.	MR. JUSTICE CLAUSON.	MR. JUSTICE RUSSELL.	MR. JUSTICE TOMLIN.
Monday Mar. 28	Mr. Bloxam	Mr. Hicks Beach	Mr. Ritchie	Mr. Synge
Tuesday .. 29	Hicks Beach	Bloxam	Synge	Ritchie
Wednesday . 30	Bloxam	Hicks Beach	Ritchie	Synge
Thursday .. 31	Hicks Beach	Bloxam	Synge	Ritchie
Friday April 1	Bloxam	Hicks Beach	Ritchie	Synge
Saturday .. 2	Hicks Beach	Bloxam	Synge	Ritchie

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-à-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 7th April, 1927.

	MIDDLE PRICE 23rd Mar.	INTEREST YIELD. £ s. d.	YIELD WITH REDEMPTION. £ s. d.
English Government Securities.			
Consols 4% 1957 or after	85½	4 13 6	—
Consols 2½%	54⅛	4 11 6	—
War Loan 5% 1929-47	101 1/16	4 18 6	4 19 6
War Loan 4½% 1925-45	95⅞	4 14 0	4 17 6
War Loan 4% (Tax free) 1929-42	99¾	4 0 0	4 0 0
War Loan 3½% 1st March 1928	99	3 11 0	4 12 0
Funding 4% Loan 1960-90	87¼	4 12 0	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	91½	4 7 6	4 10 0
Conversion 4½% Loan 1940-44	95⅛	4 14 0	4 17 6
Conversion 3½% Loan 1961	74 5/16	4 13 6	—
Local Loans 3% Stock 1921 or after	63	4 15 6	—
Bank Stock	249xd	4 16 6	—
India 4½% 1950-55	91	4 19 0	5 2 6
India 3½%	68½	5 2 6	—
India 3%	59½	5 1 0	—
Sudan 4½% 1939-73	94½	4 16 0	4 19 0
Sudan 4% 1974	84	4 15 0	4 18 0
Transvaal Government 5% Guaranteed 1923-53 (Estimated life 19 years)	81½	3 14 0	4 12 0
Colonial Securities.			
Canada 3% 1938	84½	3 11 6	4 18 0
Cape of Good Hope 4% 1916-36	91½	4 7 6	5 2 0
Cape of Good Hope 3½% 1929-49	79½	4 8 0	5 1 0
Commonwealth of Australia 5% 1945-75	100½	5 0 0	5 0 0
Gold Coast 4½% 1956	94¾	4 15 6	4 17 6
Jamaica 4½% 1941-71	90xd	5 0 0	5 1 0
Natal 4% 1937	92	4 7 0	5 0 0
New South Wales 4½% 1935-45	87½	5 3 0	5 11 6
New South Wales 5% 1945-65	95½	5 5 0	5 6 6
New Zealand 4½% 1945	95	4 15 0	4 18 6
New Zealand 4% 1929	98¼	4 1 0	5 2 6
Queensland 5% 1940-60	96½	5 4 0	5 6 0
South Africa 5% 1945-75	101¼	4 18 6	4 19 6
S. Australia 5% 1945-75	98¼	5 1 6	5 2 6
Tasmania 5% 1932-42	100	5 0 0	5 1 0
Victoria 5% 1945-75	100	5 0 0	5 1 0
W. Australia 5% 1945-75	99¼	5 0 6	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62¼	4 16 0	—
Birmingham 5% 1946-56	101¼	4 19 0	5 0 6
Cardiff 5% 1945-65	100¼	4 19 6	5 0 0
Croydon 3% 1940-60	68¾	4 7 6	5 0 0
Hull 3½% 1925-55	78¼	4 10 0	5 0 0
Liverpool 3½% on or after 1942 at option of Corpn.	72½	4 17 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	51⅓	4 17 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62¾	4 15 6	—
Manchester 3% on or after 1941	62½	4 16 6	—
Metropolitan Water Board 3% 'A' 1963-2003	63	4 14 6	4 16 0
Metropolitan Water Board 3% 'B' 1934-2003	64	4 13 6	4 15 0
Middlesex C. C. 3½% 1927-47	81½	4 6 0	4 18 0
Newcastle 3½% irredeemable	71½	4 18 6	—
Nottingham 3% irredeemable	62½	4 17 6	—
Stockton 5% 1946-66	100½	4 19 6	4 19 6
Wolverhampton 5% 1946-56	100xd	5 0 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	80½	4 19 6	—
Gt. Western Rly. 5% Rent Charge	99	5 1 0	—
Gt. Western Rly. 5% Preference	92½	5 8 0	—
L. North Eastern Rly. 4% Debenture	74½	5 7 6	—
L. North Eastern Rly. 4% Guaranteed	70½	5 13 6	—
L. North Eastern Rly. 4% 1st Preference	63½	6 6 0	—
L. Mid. & Scot. Rly. 4% Debenture	78½	5 2 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	75½	5 6 0	—
L. Mid. & Scot. Rly. 4% Preference	70	5 14 0	—
Southern Railway 4% Debenture	79½	5 0 6	—
Southern Railway 5% Guaranteed	97	5 3 0	—
Southern Railway 5% Preference	91½	5 9 0	—